

Legislative Engagement in the Open Government Partnership

I. Background on Legislative Engagement in OGP

Legislative Openness has been on the OGP agenda since the early days. The Legislative Openness Working Group (the Working Group) - led by the National Democratic Institute (NDI) and the Congress of Chile - was formally launched at the Open Government Partnership (OGP) Summit in London on October 31 to November 1, 2013. Along with four other thematic Working Groups, the Legislative Openness Working Group was formed in response to growing demand throughout the OGP community for support and peer learning opportunities for participating parliaments. At the time of the launch of the Working Group, few parliaments were participating in the domestic OGP process and there was limited parliamentary awareness of OGP, despite the multiple benefits provided by deeper parliamentary engagement.

Since its launch, over 45 OGP member country legislatures have engaged in Working Group activities, over 70 meetings or conference sessions have been organized, 15% of all OGP commitments require legislative action, several NAPs expressly include commitments from the legislative branch (Ghana, Kenya, Greece and others) and four national parliaments (Chile, France, Georgia, Ukraine) have developed independent parliamentary openness plans, which are separate from NAPs done by the executive branch though seem to adhere to similar principles as the domestic OGP process. The significant growth in parliamentary participation speaks to both the demand for an enhanced role for the legislature as well as the value of greater legislative engagement.

The Criteria & Standards subcommittee of the OGP Steering Committee started discussing the modalities of more formal legislative engagement in July 2015. In early 2016, some of its members, together with the Support Unit, drafted a [Discussion Paper on the Role of Legislatures within the OGP Framework](#) (the Discussion Paper), to inform a Steering Committee 'strategy discussion' on legislative engagement in OGP at the May 3-4, 2016 meeting in Cape Town, South Africa.¹

The Discussion Paper builds on more than three years of experience in engaging legislatures in OGP. It presented four options for consideration going forward. The reaction of the Steering Committee to the Discussion Paper and to enhanced legislative engagement in OGP has been uniformly positive. In Cape Town, Steering Committee members recommended the development of a draft policy, focusing on Options 2 and 3 outlined in the Discussion Paper. Option 2 involved the development of specific open parliament commitments as a separate chapter of the National Action Plan (NAP); Option 3 would allow parliaments to develop their own stand alone separate action plans, but following parallel guidelines.

Specifically, the Steering Committee minutes indicate that "*Steering Committee members agreed that a proposal should be developed and presented to the full Steering Committee at its next meeting in September.*" This policy paper, submitted to the Steering Committee by the Criteria & Standards

¹ The Discussion Paper drew in part on an [options memo](#) prepared by the Working Group, on contributions by other key actors on legislative engagement and on scoping research by Fola Adeleke.

subcommittee for review and approval at their September 2016 meeting, incorporates input received from Steering Committee members since the Cape Town meeting, as well as additional input from the Support Unit, Steering Committee members, members of the Legislative Openness Working Group, the United Nations Development Programme and other key stakeholders.

II. Contributions of Parliaments to Advancing Open Government

In the three years since the creation of the Working Group, the value that parliaments add to the OGP process has been clearly demonstrated. In particular, OGP recognizes that parliaments can advance open government through OGP in the following ways.

- **Enactment of, and Resourcing Implementation of, Open Government Reform.** Legislatures, in their power to legislate and allocate resources, play a key role in supporting sustainable open government reforms. Indeed, legislative action is required (through the adoption of an access to information law) for a country to even become eligible for OGP membership. Parliaments have a valuable role to play in encouraging countries to become eligible and consider joining OGP. Legislation and budgetary resources help ensure that executive branch OGP commitments are sustainable and effectively implemented. A productive role for the legislature helps ensure the institutionalization and effective implementation of open government commitments. It is also noted that parliaments can play an important role in pushing for more ambitious OGP commitments and can help spread knowledge regarding OGP and membership requirements with peers in non-OGP countries.
- **Sustainability of Open Government Reforms Across Administrations.** When OGP engagement becomes closely associated with a single administration, there is a risk that OGP progress will suffer when a new government is elected. Engaging parliaments in OGP can help both build political support across the political landscape and ensure that changes in government do not weaken active national participation in OGP. There have been excellent examples of very collaborative parliamentary engagement that have included both government MPs, opposition MPs, and civil society working collaboratively together. For instance, the Inter-Factional Working Group of the Parliament of Georgia was recognized with the first Open Government Champion Award at the OGP Summit in Mexico City for its collaboration with civil society in the development of an open parliament plan.
- **Oversight of National Action Plans.** Most legislatures have the constitutional responsibility for overseeing government activity, including government implementation of the NAP. Although the Independent Reporting Mechanism provides valuable feedback on the implementation of NAP commitments, parliamentary oversight help increase the likelihood that actions are taken in response to that feedback, providing valuable accountability to encourage full implementation of NAP commitments. This is a crucial need to overcome the implementation gap. For instance, public hearings that review the Independent Reporting Mechanism report may be a valuable addition to the review process, particularly if parliaments are supported to ensure that hearings are conducted in a professional, constructive manner.
- **Advancing Legislative Openness.** While legislative participation in OGP can advance open government reforms broadly, greater participation can also support institutional reform by



encouraging legislatures to make commitments to open their information and processes. Insofar as open government is an attempt to build citizen trust and strengthen the relationship between the public and their government, legislatures play a key role in realizing these goals as the representative branch of government.

III. Policy Guidance on Legislative Engagement in OGP

Recognizing the benefits of regularizing parliamentary engagement in OGP for the reasons discussed above, the OGP Steering Committee makes the following Policy Guidance statements to facilitate and encourage parliamentary engagement within OGP. The Policy Statements are also intended as guidance to the OGP Support Unit and the IRM with respect to parliamentary engagement.

In summary OGP's approach going forward can be summarized in the six points below (with more detail below):

1. OGP encourages parliamentary engagement in many forms - from peer learning in the working group, to MPs playing a leading role passing relevant legislation, and participation in events to parliament-driven chapters of National Action Plans.
2. Parliaments in OGP countries that wish to develop open parliament commitments, should do so either integrated as part of the NAP **or** as a separate parliamentary chapter of the NAP. Regardless of how commitments are integrated into the NAP, the IRM and the Criteria and Standards sub-committee will continue to assess the country at the national level.
3. If Parliaments opt to develop a separate chapter of the NAP they should do so in a way that is consistent with OGP principles and participation requirements (e.g. IRM, self-assessment and co-creation).
4. Countries should seek synergy between the commitments initiated by the executive and those initiated by the parliament.
5. The primary point of contact for the OGP Support Unit remains the POC in the executive branch of government. All OGP member countries - and especially those developing open parliament chapters - are however encouraged to consider designating a parliamentary focal contact primarily to facilitate interaction on open government efforts at the national level and with the LOWG.
6. OGP will assess this policy guidance 18 months after approval to see if the guidance needs to be amended and/or if additional efforts by OGP on legislative openness need to be considered.

- 1. OGP encourages parliamentary engagement in many forms - from peer learning in the working group, to MPs playing a leading role passing relevant legislation, and participation in events to parliament-driven chapters of National Action Plans.**

OGP recognizes that parliamentary engagement may vary widely among OGP member countries with different national systems, different constitutional frameworks, and diverse political environments. Countries with parliamentary systems, for instance, may, in some instances, be better positioned to ensure legislative-executive collaboration on OGP than separation-of-powers countries. Given that OGP has to accommodate a range of constitutional and political contexts, OGP recognizes the importance of a flexible, responsive parliamentary engagement policy that does not assume that "one-size-fits-all."



A core role in providing inspiration and facilitating connections and learning is played by the members of the LOWG. They are a core driver of parliamentary engagement through their daily work, their LOWG activities like GLOW and through OGP meetings and events like the Global Summits and Regional Meetings.

When it comes to implementing OGP commitments, it has been noted, that some 15% of NAP commitments require legislative action, and a several of these commitments involve the process by which laws are developed. That is another core aspect of parliamentary engagement.

This policy guidance primary aim is to create a framework for more parliamentary commitments, either within the existing NAP structure or as a separate parliamentary chapter. Some parliaments however may feel that it is not possible to work fully within the core OGP framework (e.g. co-creation; 2-year plans according to a prescribed timeline). For example, in some countries, parliaments may not be in session in the months before a NAP is being finalized. In other countries, it may be more challenging for parliaments to develop “stretch” commitments that would survive under a successor parliament than it may be for government ministries to engage in long-term planning.

Similarly, a parliament in a country that is not participating in OGP may also wish to advance open parliament commitments. However, plans that do not follow the OGP framework or plans that are developed by parliaments from non-OGP countries would not be supported by the OGP Support Unit and would not be assessed by the IRM. They should not be considered to be formally part of OGP, and should not use OGP branding². However, OGP recognizes the value of these independent efforts to advance parliamentary openness and welcomes efforts to share the content and best practices from all parliaments within the work of the Legislative Openness Working Group, regardless of the particular mechanism they choose to advance parliamentary openness.

- 2. Parliaments in OGP countries that wish to develop open parliament commitments, should do so either integrated as part of the NAP or as as a separate parliamentary chapter of the NAP. Regardless of the approach--i.e. if commitments are integrated in the NAP or as a separate parliamentary chapter of the NAP--the IRM and the Criteria and Standards sub-committee will continue to assess the country at the national level.**

Currently, the majority of NAP commitments relate to the executive branch of government. OGP encourages parliamentary involvement in the development, implementation and review of these action plan commitments, but also welcomes national legislatures to include open parliament reform commitments in the NAP, as some countries have done. The Criteria & Standards subcommittee agreed in July 2015 that their strong preference is to have one OGP NAP per country. It is noted that a NAP is just that -- a *National* Action Plan, rather than an executive action plan. It is strongly encourages that governments and parliaments coordinate in the development of a national action plan (see point 4).

² This has for instance been the case for the Open Parliament Action plan of Costa Rica: <http://accesa.org/2015/10/20/directorio-legislativo-presenta-junto-con-alianza-por-una-asamblea-abierta-el-plan-de-acciones-prioritarias-para-la-apertura-legislativa/>.



Building on the above, while recognizing that legislatures are a separate branch of government, parliaments in OGP countries that wish to develop open parliament commitments should do so by one of two options:

- The first option, which most OGP countries currently follow, is to integrate open parliament commitments directly in the “Commitment” section of NAPs.
- The second option is to add a separate parliamentary chapter into the country’s NAP.

Whatever option is chosen, it is strongly encouraged that lead actors in the executive and in parliament coordinate and seek synergy and coherence.

3. If Parliaments opt to develop a separate chapter of the NAP they should adhere to all OGP principles and participation requirements, guidelines and timelines that are in place for NAPs (e.g. IRM, self-assessment and co-creation), including the IRM monitoring protocol and process).

Parliaments of OGP countries should adhere to the principles of the Open Government Declaration and the Articles of Governance (particularly addendum B & C), especially when they develop open parliament commitments. For instance, parliaments of OGP countries should support public participation of all people, equally and without discrimination, in decision making and policy formulation and should create mechanisms for greater collaboration between parliaments and civil society in development of open parliament commitments. Parliaments that wish to signal further commitment to open parliament principles may also consider endorsing the *Declaration on Parliamentary Openness*, a series of principles on access to information and citizen participation that has been endorsed by over 180 civil society organizations in 80 countries, as well as a growing number of legislatures.

For parliaments that decide to develop a separate chapter of the NAP, parliaments should adhere to the exact same guidance as national governments. In particular, the chapter should:

- Cover the same period of time as the NAP (2 years);
- Be submitted to OGP as part of the NAP through the official government POC and thus be submitted and commence at the same time as the NAP;
- Follow the OGP co-creation guidelines and thus be developed and implemented in partnership with civil society;
- Follow NAP development guidance on for example format and SMARTness of commitments (e.g. define implementing partners, define milestones, identify link to key OGP values);
- Be subject to the process and timeline of the country’s review by the Independent Reporting Mechanism. Per country there will only be one IRM process and for each NAP cycle one IRM Progress Report and one IRM End of Term report.
- Parliament must develop a self-assessment chapter (both on progress and End of Term) that will be included in the countries self-assessment and delivered by the official POC. Parliaments should prepare for that review in the same way that governments do, for example, by actively monitoring the implementation of the action plan commitments as well as by retaining clear records of the consultative process used to develop them.
- It should be noted that inclusion of parliaments will not affect the definition of “acting contrary to OGP process”. This will continue to be addressed at the national level.

4. The primary point of contact for the OGP Support Unit remains the POC in the executive branch of government. All OGP member countries - and especially those developing open parliament



chapters - are however encouraged to consider designating a parliamentary focal contact primarily to facilitate interaction on open government efforts at the national level and with the LOWG.

This policy guidance paper is an important step forward in enabling and hopefully inspiring a strong uptake of parliamentary engagement. Strategically supporting reformers at country level to develop and implement ambitious commitments is however challenging and time-intensive and the capacity of the OGP Support Unit limited. While recognizing the reality of an increasing set of demands on the OGP Support Unit, both the level of engagement by parliaments in OGP and the benefits of this engagement may merit increased support by the OGP Support Unit. This should be an explicit point of discussion in the 'OGP strategic refresh'.³

Until that process is concluded the space for the Support Unit to support a strong uptake of parliamentary engagement is very limited. At this point the Support Unit *can* commit, with the support of the LOWG, to write to all participating country parliaments once after this policy guidance is approved, providing contact details of lead ministry and PoC, introducing the general basics of OGP and the specifics of their national OGP cycle, highlighting the options for parliamentary engagement and hopefully inspiring them to action. Follow up to that introduction will then need to come from the LOWG and other key interested actors in the field to make this concrete.

As a means of formalizing parliamentary participation, OGP countries may consider designating a parliamentary lead (PL). PLs would not change the role of the existing OGP points of contact (POCs), who would remain the primary channel of communication between the Support Unit and OGP countries and the overall point of contact with respect to the NAP. However, identifying a PL would provide the Support Unit, the Working Group, the POC and other (national) stakeholders with a clear channel of communication with parliaments (if needed/desired), which would facilitate sharing information about OGP events, the release of IRM report, progress on developing and implementing NAPs, and other useful information. PLs would also be able to facilitate peer exchange and learning between participating parliaments. Lastly, maintaining a liaison in the executive legislative would help facilitate inter-branch collaboration and dialogue related to OGP.

Recognizing the diversity of legislative practice and the variety of political and constitutional contexts among OGP members, the selection of PLs should be left to the legislatures. The role could be successfully filled by a variety of individuals. For instance, a PL could be a senior administrative or technical officer, the presiding officer, an advisor to the presiding officer, the chair of a relevant parliamentary committee, or a lead staffer for that committee. The Legislative Openness Working Group has developed a [Toolkit for Advancing Legislative Openness](#), which can be used as guidance for PLs.

5. Countries should seek synergy between the commitments initiated by the executive and those initiated by the parliament

³ If resources allow, the Support Unit may wish to consider the hiring or designating a point of contact within the Support Unit responsible for facilitating communications with participating parliaments, liaising with the Legislative Openness Working Group, supporting the development of legislative commitments, facilitating collaboration between the executive and legislative where needed, and ultimately growing the number of participating parliaments. Recognizing resource limitations faced by the Support Unit, a cost sharing arrangement with a participating parliament or civil society organization could be explored.



It is recommended that there is coordination between government and parliament to see how development and delivery of ambitious commitments can be facilitated as best as possible. It is strongly encouraged that governments connect and seek synergy.

If a country opts for a separate chapter, experience shows that countries have found it helpful to have a coordinating meeting to help ensure that there is synergy between commitments developed by each branch. Countries should explore if they prefer to have one commitment development process or two. OGP requires a country to establish a Permanent Dialogue Mechanism. Representatives from parliament and/or the PL should be part of the country's PDM. There already are examples of this practice where some countries had decided, for example, that institutions of traditional leadership or Members of Parliament are allocated representation in the PDM. OGP does not encourage separate PDMs for parliament.

There is recognition that most countries in the OGP might already have highly developed processes for public participation in legislative work. Where a country decides to run a separate legislative commitment development process following their standard public consultation processes, the PDM should ensure that such process followed by the legislative authority meets the OGP's basic requirements on public consultations and the co-creation guidelines.

6. OGP will assess this policy guidance 18 months after approval to see if the guidance needs to be amended and/or if additional efforts by OGP on legislative openness need to be considered.

Given the continued evolution of parliamentary engagement in OGP, based on the above policy recommendations, it may be appropriate to review this guidance after an 18 month period to ensure that the Policy Guidance reflects as much as possible the needs of the OGP parliamentary community, while also protecting the core principles, priorities and guidelines of the OGP model.

The above policy guidance is based on three years of legislative experience with respect to parliamentary engagement in OGP and resolves important issues in with respect to how to facilitate parliamentary engagement. However, parliamentary engagement in OGP continues to increase, there may be additional questions for review and consideration by the Steering Committee in the coming years as further experience is gained. For example, over time it might be helpful to develop clearer guidance on the role of parliaments in organizing and planning the OGP Summit. It should be noted that the Steering Committee and its members have been already been very creative in finding ways to incorporate parliamentary perspectives into the Steering Committee. For example, the Government of Chile has sought to include legislative representatives in its Steering Committee delegations and past and incoming civil society representatives on the Steering Committee also bring deep experience with respect to parliamentary monitoring and reform.

