PERSPECTIVES ON OPEN GOVERNMENT IN LATIN AMERICA

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THE AUTHORS

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PERSPECTIVES ON OPEN GOVERNMENT IN LATIN AMERICA[1]

INTRODUCTION

Launched on 20 September 2011, the Open Government Partnership (OGP) is a voluntary multilateral initiative that encourages governments to make commitments to 'promote transparency, empower citizens, fight corruption and harness new technologies to strengthen governance'. Governments of the countries that choose to join the partnership are required to endorse the Open Government Declaration, which means that they have made a commitment to 'foster a global culture of open government that empowers and delivers for citizens, and advances the ideals of open and participatory 21st century government'[2]. Additionally, their participation in the OGP means that they have committed to work with civil society to draw up a National Action Plan (NAP) that will provide the framework promoting open government in their countries, and that they will allow for independent reporting throughout the NAP implementation process through an Independent Reporting Mechanism (IRM).[3]

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1 This paper is based on the conclusions of a workshop entitled 'Perspectives on Open Government in Latin America', organised by the Latin America International Affairs Program (LAIAP) of LSE IDEAS on 30 October 2013. Sponsored by the World Bank Group, the OGP's Civil Society Coordination, the Organisation of American States (OAS), the Government of Peru, the Federal Institute of Access to Public Information of Mexico (Instituto Federal de Acceso a la Información Pública—IFAI) and the Alianza Regional por la Libertad de Expresion e Informacion, the event brought together more than 40 representatives from Latin American national governments, civil society and multilateral organisations with the objective of deepening the understanding of the OGP, its main challenges and opportunities within the regional context. The event was convened by Fabrizio Scrollini, a PhD candidate at the LSE Government Department. This report was co-written by Dr Ursula Durand Ochoa and Fabrizio Scrollini. The analysis is also based on the discussions and debates that took place during the 2013 OGP London Summit.

2 Open Government Partnership Declaration available at http://www.opengovpartnership.org/about/open-government-declaration

3 'Open Government Partnership Actions Plans' OGP Webpage: 'How it Works' http://www.opengovpartnership.org/how-it-works/action-plans

At the time of its launch in 2011, the OGP consisted of eight founding countries (Brazil, Indonesia, Mexico, Norway, the Philippines, South Africa, the United Kingdom and the United States). Only three years later, the OGP now encompasses a total of 63 countries, including 15 governments of Latin America and the Caribbean.

The commitments made by the governments of Latin America as OGP members encompass a wide range of initiatives and goals including reforming policies, broadening citizen engagement and increasing access to information and accountability. For Latin America's civil society, these commitments carry expectations of deepening citizen participation and government responsiveness. However, the outlook on these expectations remains uncertain. On the one hand, some national Action Plans may lack ambition. On the other hand, the established channels and processes of participation are not firmly in place. A recent paper by the Inter-American Development Bank (IADB) noted that Latin American action plans face issues defining open government, establishing clear participation channels, evolving from a traditional e-government perspective and more generally reaching the public.[4] Within this context, civil society has expressed concerns regarding the extent to which the expectations of open government will materialise and its role in the design, implementation and evaluation of NAPs. In short, the idea of a partnership between government and civil society remains an area for further development, where some countries made more progress than others.

This paper begins by providing a brief history of the open government process. In doing so, it discusses the path toward the formation of the OGP and the challenges the OGP has faced to date. It then analyses the state of the OGP in Latin America. Lastly, it shares some conclusions and recommendations for enhancing Latin America's experience with the OGP, which ultimately rests on strengthening the government-civil society partnership. Whilst all countries involved in the open government process have similar intended outcomes – increased transparency, participation and collaboration – the path to reaching these outcomes varies for every country depending on several contextual factors, such as their starting point vis-à-vis open government, history of government transparency and corruption, political will and degree of civil society organisation.

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4   Álvaro Ramírez-Alujas and Nicolás Dassen **'Winds of Change:** The Progress of Open Government Policymaking in Latin America and the Caribbean' **Inter-American Development Bank** Institutions for Development Institutional Capacity of the State Division **TECHNICAL NOTE** No. IDB-TN-629 (April 2014)

THE OGP: A CLOSER LOOK

History of the OGP. Latin America's governments have proven resilient and in most cases stable since the wave of democratisation of the 1980s and 1990s. Whilst free and fair elections take place regularly and democracy is the norm, the governments of the region still face significant challenges in terms of the quality or deepening of democracy as democracy requires much more than abiding to electoral processes. Horizontal and social accountability, protection of human rights, respect for the rule of law, broad representation and participation, improved public services such as health care and education – amongst other factors – are also essential for a functioning democracy. In addition to stable democracies, Latin America has witnessed nearly a decade of sustained economic growth. Within this context, especially in terms of the prosperity brought by the current economic boom, governments have faced increasing demands from citizens to provide transparency, accountability and improved public services. Recent teacher strikes Brazil, student protests in Chile and anti-mining protests Peru have highlighted the need for governments to address several institutional issues, including how citizens can participate in the reform processes leading to the fulfilment of their demands. The rise of technology, particularly in terms of social media, has generated new channels of expression that offer innovative and exciting ways to participate. However, such new channels also pose risks in terms of privacy and surveillance.

Latin America has an active civil society and a long tradition of human rights advocacy that played a pivotal role in coming together to demand the right for the truth after the fall of the military dictatorships that ruled most of the region before the third wave of democratisation. Since the democratic transition, civil society has now undertaken a reform agenda that seeks new rights. Several Civil Society Organisations (CSO)s have been campaigning to secure access to information laws in the region. Others have also been working on public integrity reforms. There are also initiatives indicating that a new breed of organisation is emerging – one that works at the intersection of technology, human rights and open government data and that seeks to find novel and creative ways to engage citizens.

The OGP has become the leading forum which brings together CSOs and regional networks working on different streams of the transparency and accountability agenda in the region. It provides a platform for the development of new ways of engagement between government and civil society based on transparency, participation and collaboration.

Current challenges of the OGP. A look at the current state of open government across the world reveals two distinct trends. First, countries are increasingly adopting laws on access to information, transparency and public participation in policy-making due to rising domestic and international demands. Second, these very same governments are at the same time placing restrictions on media and civil society. Civil society thus faces a significant challenge: it needs to take a stand in defence of its role and space in society vis-à-vis national governments, but at the same time work with these national governments to bring about change. Through NAPs, the OGP has provided civil society a forum to address this challenge. NAPs provide civil society with the opportunity to work with national governments in identifying priority commitments and co-designing an action plan.

In the first quarter of 2013, the OGP undertook an evaluation of 15 participating countries' experience with their first NAP based on a series of interviews of government officials and civil society members.[5] The interviews revealed several common themes. First, the notion of open government requires political will if NAPs are to make any significant change. Countries need to have a firm commitment to the objective of fostering a collaborative relationship between government and civil society. This is especially true in countries that have a limited history in terms of the relationship between these two actors. Second, civil society needs to act concertedly in engaging governments around OGP issues. Successful advocacy around commitments in an NAP requires that civil society become organised and work together. Yet civil society itself encompasses different actors with different agendas. Coordination within civil society is essential for an effective civil society-government partnership. Third, a successful and functional relationship between civil society and government requires a platform for dialogue. These platforms need to become institutionalised in order to encourage continuous dialogue between these two actors rather than one-off consultations. Fourth, consultations and dialogue need to be as broad as possible; they should represent and reflect the views of government and civil society at all levels. This presents a challenge in countries that are multi-lingual and multi-ethnic societies. Fifth, civil society and government need to work together to build long-lasting and effective partnerships. The essence of this point is best summarised in a recent OGP report:

> It takes time and effort to build trust and a working relationship between government and civil society. Understanding of one another is required. The actors must listen to and appreciate various viewpoints, keep an open mind whilst thinking critically, and must work towards constructive engagement.[6]

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5   Vasani D., Pavlou A. and P. Maassen (2013), 'Improving the OGP Experience' Hivos: The Hague. Available at http://www.ogphub.org/media/ImprovingtheOGPExperience.pdf

6   Vasani D., Pavlou A. and P. Maassen (2013), op.cit., p.10

This last point brings us back to the fundamental challenge civil society faces, which is to balance its two potentially conflicting roles: to work with government to establish and foster an effective partnership, on the one hand, and to continue to function as the 'watchdog' of government (and be prepared to contest government should it fail to comply with its commitment on transparency, participation and accountability), on the other hand.

THE STATE OF THE OGP IN LATIN AMERICA

Latin America's experience with open government exposes a number of themes. One of the most important is the relationship between civil society and government, particularly how to maintain a balanced relationship between the two. There is a need to strengthen individual countries' civil society to enable it to function with more cohesion in its relationship with government. Sectors of civil society that engage with government should be more representative and cover a wider spectrum of interests and agendas. The OGP should, for example, include local organisations in addition to large global CSOs or NGOs so that a plurality of perspectives is included in the open government process. The inclusion of a broad range of CSOs is essential because it lends more legitimacy to NAPs, which then facilitates their implementation. This is especially true for countries that are multi-ethnic and multi-cultural, as are many in Latin America. In addition to being representative, CSOs need to establish mechanisms or processes that help them work together effectively. The lack of such mechanisms has generated challenges in some cases. Whilst Costa Rica's CSOs are very active and have successfully worked with government to generate new policies and practices, they lack a national umbrella organisation to help them systematically engage with government to coordinate the OGP process. On the other hand, in Uruguay, the recent creation of an Open Government Network composed of 12 diverse CSO's has offered a platform to collectively negotiate with the government as well as enhanced the legitimacy of the process.. All in all, more representative and organised civil societies can enhance the OGP process in Latin America by promoting the inclusion of wider interests, a more balanced partnership and enhanced legitimacy.

The role of civil society in the context of OGP is to advocate for change and provide innovative ideas. Furthermore the role of the civil society is to keep government accountable to the agreements reached in this process. This kind of activity demands resources if it is to be sustainable and CSOs in the region are acutely aware of this issue.[7] CSO have limited resources and the core of the OGP process assumes and active role in several fronts. Most OGP engagement in the region has no or low support from traditional donors.

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7   Marian Mas 'CSO- Day' available at http://datauy.org/cso-day-representantes-de-la-sociedad-civil-se-reunen-a-debatir-sobre-gobierno-abierto-america-latina-y-el-caribe/ accessed 15 October 2014.

In addition to civil society, it is essential to consider the government side of the relationship. First, it is important to involve a diverse array of government representatives across sectors and at both the national and local levels. As with civil society, involving different government agencies is key to enhancing the degree of legitimacy of any given country's government-civil society partnership. Second, successful open government processes will require a strong national Secretariat or OGP Point of Contact within government that could bring other public agencies on board, and that the government representatives involved in OGP spaces have the power to make decisions. In the case of Mexico, those government officials engaged in OGP had the capacity to reach agreement on open government. This, however, has not been the case in many countries engaged in OGP in Latin America.

Another common theme concerns the process and quality of the NAPs. Governments have too often adopted action plans that do not push the boundaries of the transparency, participation and accountability in the domestic framework; instead they encompass a series of commitments which appear to be a government plan – some of which have been already underway and are easy to fulfill. The commitments made by governments were also criticised for being disconnected from actions that could lead to real change for people in their daily lives. Governments should therefore commit to more ambitious NAPs. Furthermore, CSOs lamented that other branches of governments (e.g. the Judiciary and the Parliament) were not involved in the OGP process.

Another shortcoming of the process is time. Vasani et al. have noted that time constraints restricted the meetings between CSOs and government over the design of Peru's first NAP to the capital city of Lima.[8] This posed limitations for the inclusion of wide interests given the heterogeneity of Peruvian society and geographical distance between the coastal capital and its more remote Andean and Amazonian regions. The experience of Costa Rica's consultation process also brings to light important points. First, the focus on the government's digital strategy seemed to overshadow other issues such as policies to promote transparency, participation and collaboration. Second, the focus rested too much on the short term rather than on the long term. After the NAP was formally presented by the government of Costa Rica in April 2013, additional consultations between government and civil society took place, and the government has asked CSOs to elect representatives to the National Steering Committee, which will develop indicators and monitor the implementation of the NAP. The case of Costa Rica thus highlights an important point – that establishing an effective relationship between government and civil society (that is, promoting open government) is a process. Furthermore, given that Costa Rican CSOs and government officials have noted that they have taken lessons from the consultation experiences of countries such as Mexico and Peru, the case demonstrates the power of example and the regional dynamic of the process.

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8   Vasani D., Pavlou A. and P. Maassen (2013), op.cit.

While the Independent Reporting Mechanism (IRM) is a more recent development, the first two founding member countries of the OGP to have completed this phase, namely Brazil and Mexico, provide useful lessons. Although IRMs had not necessarily led to the formulation of a second round of NAPs in certain cases, they had proven useful in evaluating the consultation process and in promoting dialogue between civil society and government – rather than have each party propose their own independent agendas as was the case in Mexico. In short, whilst the utility of IRMs in terms of their capacity to evaluate the implementation of NAPs is still limited, they could lead to a more consensual process of identification and formulation of commitments between government and civil society.

Another theme is the dynamics between international and national OGP meetings and processes. While the international OGP process is cited as important because it provides a chance for civil society and government to interact more or less as equals, this is not always replicated at the national level[9]. The OGP summits and regional conferences provide an international platform for governments and CSOs to exhibit their achievements and how they may have worked together, which can also serve to inspire others towards further improvement – a 'race to the top'. The summits and regional meetings are a unique opportunity for civil society and the governments to discuss issues under conditions of parity with each other. The international exposure helps governments and civil society to advance the agenda, but the parity aimed for at the summit meetings does not necessarily translate into local processes after participants return home. While international events are a place for dialogue, they could serve as working meetings rather than as arenas where they simply exchange ideas and provide each other with updates.

On a different note, technology is a powerful tool for open government. For instance, the experiences of civil society in Chile, Uruguay and Brazil with online access to information portals, which allow people to request public information through their internet browser, demonstrate the innovative ways that people are exercising their rights in the digital age. There are, however, some potential problems to consider that would require close cooperation between stakeholders to advocate change. One issue is the gap that exists between the new breed of organisations working on the technology field and the traditional ones that tend to downplay the value of technology. New organisations, conversely, place a higher value on technology and often prefer to work exclusively through solutions involving technology. Governments, meanwhile, can employ flexibility, creativity and engagement to help them effectively address new forms of citizen activism.

Related to technology is the promotion of the open data agenda across the region, which advocates the release of public data in an open format. The open data agenda presents significant opportunities for strengthening the open government process. Open data provide primary information that can be used for several purposes, including transparency, accountability and enhancement of human rights. However, in order to best serve these

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9   Open Government Partnership Articles of Governance http://www.opengovpartnership.org/node/1329 accessed 15 October 2013.

purposes, open data need to operate hand in hand with an agenda that aims to establish a framework for the exercise of rights and solve social issues. Furthermore this agenda would need to address key issues regarding privacy, surveillance and information rights in the digital age. A truly open government must take into account citizens' expectations of privacy and address calls for regulation of information in light of technological developments.

CONCLUSIONS AND RECOMMENDATIONS

This paper has highlighted a series of challenges and concerns relating to the state of the OGP process, worldwide and particularly in Latin America. Some of these challenges rest on the side of government, some on the side of civil society; some rest on the international arena, some on the national arena; and some are specific to certain countries.

Overall, Latin America's experience with open government thus far demonstrates that the likelihood of formulating and implementing reforms depends on the situation of each individual country. In short, context matters. Both government and civil society participants noted variations across Latin America in regard to the degree of the influence of CSOs in the process.

On the government side, government officials who participate in the process at times have very limited power to make commitments. Therefore political support is essential to advance OGP in Latin America. On the civil society side, it is important to maintain an independent stance in the OGP process, while also being able to propose and collaborate towards the achievement of agreed goals.

In closing, it is important to keep in mind that the notion of 'open government' is an ideal – one that is ambitious and multifaceted – that has yet to transform itself into something with a tangible impact on the lives of everyday people. Open government must ultimately lead to positive change such as access to better health services, or lead to policies that protect environmental rights. Without producing real change and without reaching grassroots communities and providing them with a sense of ownership, open government runs the risk of becoming a passing fad. The open government process must thus reach out to and involve the average citizen and grassroots organisations at every level of society.

Still, one cannot ignore one significant effect of the OGP process thus far. The OGP process is one that has provided valuable lessons for civil society organisations across the region. It has highlighted the value of working together and making a concerted effort within civil society itself, and that there are new avenues for enacting change and for participation. The role of the citizen in Latin America is slowly changing, the question remains on how to maximise its potential to become empowered and use that power to work with government, rather than simply oppose it. ∎
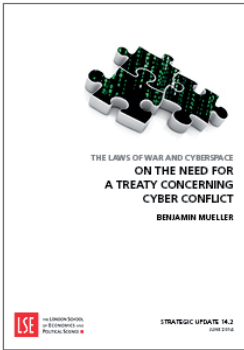
Cyberspace is a domain of warfare unlike all others: it is informational in nature, accessible without the need for spatial proximity, and acts as a global data and communication highway. These properties have given rise to patterns of continuous, low-intensity clandestine cyber conflict. The existing Laws of War, which apply to cyberspace as a matter of doctrine, are ill-equipped to deal with this. The community of states must negotiate a treaty on cyberwar, institutionalise cross-border law enforcement cooperation of cybercriminals, and place state-sponsored digital espionage within the World Trade Organisation's remit to arbitrate anti-competition disputes.

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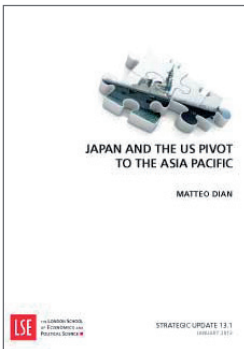
This paper analyses the consequences of the US pivot to Asia on the US-Japan alliance and on Japanese foreign and security policies. On the one hand, the US pivot is reassuring for Tokyo, since it seeks to 'rebalance' Chinese military ascendency and to strengthen extended deterrence in the region. On the other hand, it contributes to the acceleration of the 'normalisation' of Japanese security policies, speeding the process of overcoming the institutional self-binding prescriptions that underpinned Japan's post-war pacifism.

Matteo Dian was a visiting research student at the LSE IDEAS, and a visiting graduate student at the European University Institute and at the Paul H. Nitze SAIS, Johns Hopkins University.
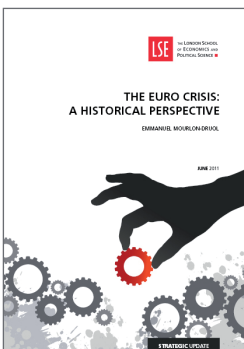
In this research report IDEAS explores the current euro crisis by looking at the debates preceding the conception of the euro. How can the early days of EU monetary cooperation help us understand today's predicament? And what lessons can we draw from them for the euro?

Emmanuel Mourlon-Druol was the Pinto Post-Doctoral Fellow at LSE IDEAS for the 2010-2011 academic year.

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Open Government – the idea of transparent, accountable and participatory governments – is blossoming in Latin America. Most Latin American countries are members of the recently founded international initiative the Open Government Partnership (OGP). The OGP is an alliance of countries and civil society organisations created in 2011 that seeks to promote open government globally. Initially led by the United States and Brazil, the alliance now has 65 countries and its membership keeps growing. This paper reflects on the evolution of the OGP in Latin America based on a one-day workshop held at the London School of Economics and Political Science ahead of the Open Government Partnership Summit in London in September 2013. It discusses the need for clear rules of engagement for civil society and public servants in the making of national OGP action plans, the need for support for OGP processes on the ground and the need to develop a more inclusive process. It also underscores how technology, the use of public data and a strong civic ethos have contributed the emergence of new civil society organisations. Finally, it concludes by citing that the OGP is an opportunity to advance significant reforms in the region in terms of accountability, transparency, service delivery, open government data and participation. In order to fulfil this potential, more coordination among countries and civil society in the region is necessary.