



A Next-Generation Peer Review: What Does the Open Government Partnership Have to Offer?

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RECOMMENDATIONS

- African countries should explore their eligibility for OGP membership, especially as South Africa takes over as chair of the steering committee in October 2015.
- Ghana, Kenya, Liberia, Malawi, Sierra Leone, South Africa, Tanzania and Tunisia (as OGP members) should provide support to those African countries seeking to attain eligibility.
- Participation in the OGP can be harmonised with existing review processes and should directly engage those national departments and civil society organisations that already oversee review-mechanism obligations.

EXECUTIVE SUMMARY

This policy briefing is based on a collaborative research effort comparing four international peer-review processes – the AU's African Peer Review Mechanism (APRM), the UN's Universal Periodic Review (UPR), the Organization for Economic Cooperation and Development's (OECD) Anti-Bribery Convention Review (OECD/A) and the Open Government Partnership (OGP) – undertaken by the Open Democracy Advice Centre in 2015.² This comparison demonstrated not only the benefits for enhancing transparency if a country participates in the OGP, but also how political influences must be addressed when considering participation. The pitfalls of other peer-review processes should be avoided as the OGP develops further.

INTRODUCTION

The OGP was launched in 2011 by eight countries³ as an international mechanism for improving governance. It incorporates a review process that reflects on the voluntary commitments undertaken by governments (in both the developed and developing world) to promote transparency, empower citizens, fight corruption and harness new technologies to strengthen governance.

The OGP co-exists with several established review mechanisms with human rights and good governance ambitions, including the APRM, the UPR and the OECD/A. This policy briefing distils substantive lessons from a comparison of all these mechanisms by the Open Democracy Advice Centre, completed in 2015.

The OGP is a form of independent review mechanism, where the measures for review are self-determined. Most review mechanisms, however, work by recommendations being made, which the reviewed country then implements. Their success in fulfilling those recommendations is what is measured and reviewed. By contrast, the OGP reviews the implementation of a set of

commitments that are particular to each country, but the reviewed governments develop these commitments themselves, in collaboration with national civil society.

The OGP does not have a particular institutional home, in the sense that there were eight founding countries that drew together and launched it, as noted above. The steering committee, which manages the process, is elected from existing members, with rotating chairs. Countries that are eligible to join the OGP submit a letter of intent and, if accepted, sign the Open Government Declaration. As of mid-2015, 93 countries were eligible to participate and 65 of those had formally joined, from both the developed and developing world.

WHY REVIEW?

Human rights evaluations are often conducted through a form of peer review, which can be described as: ‘the systematic examination and assessment of the performance of a State by other States, with the ultimate goal of helping the reviewed State improve its policy making, adopt best practices, and comply with established standards and principles’.⁴

With human rights and development aspirations, review mechanisms (both peer review and other types) seek to encourage improved practice through accountability, while balancing concerns in relation to the sovereignty of states. Although the effectiveness of review mechanisms can be questioned,⁵ they are a key method for promoting adherence to commonly agreed-upon norms. Yet as acknowledgments of the tenuous nature of voluntary submission, ‘they almost invariably rely, at least initially, more on the carrot of positive reinforcements and inducements ... than the stick of punitive measures’.⁶ McMahon argues that at the core of the political motivation, perhaps the most that can be offered is the reputational incentive for governments that wish to appear credibly on the international stage.

But, if mechanisms are unable to show that they cause real change, it may well render them pointless. For instance, the processes may be cumbersome to carry out (such as the APRM), or the lack of tough sanctions may mean the political reputational incentive is not significant enough to warrant change.

There are also political forces that may militate against compliance. The UPR, for example, has often

been accused of bias, perhaps enhanced by the fact that all UN members must be subject to review. All African states scheduled for the first session of the UPR requested that one of its three review members be from their own regional group – perceivably fearing bias. This political force would be heavily influenced by the perceptions of the institutional organisation that might be held by a participant in a particular review mechanism.

In this context, there are two important questions to be asked. Firstly, what are the unique benefits, if any, of the OGP process that may present an opportunity for enhanced performance? And, secondly, what can be learnt from existing review mechanisms to strengthen the OGP?

WHAT THE OGP HAS TO OFFER

The limited coverage of issues and the focused nature of the OGP review have resulted in a swift implementation and turnaround time for reporting. Since its launch in 2011, there have already been two phases for launching commitments completed by a significant portion of the countries involved. If the OGP had a formulaic list of indicators, such as those of the APRM, which are contained in over 100 pages of its Self-Assessment Questionnaire, it is doubtful that this level of progress would have been possible. This responsiveness means that the review process can highlight current and relevant threats to the governance environment, which cannot be said of processes that take a number of years to be completed. For instance, in the APRM, it is not uncommon for a country to be reviewed five or more years after accession, and the actual review process typically takes much longer than the originally envisioned nine to 12 months.

The level of civil society involvement in all OGP stages and processes not only enhances the independence of the review mechanism but also increases the potential for effective implementation of the commitments made (thus improving the efficacy of the review mechanism’s objectives). This high-level participation of civil society is in contrast to other mechanisms. For instance, in the UPR, civil society has no direct role – although civil society institutions may make contributions to the national report (which need not necessarily be included).

As one commentator has saliently noted:⁷

[In the OGP there are] minimum country membership conditions that focus on traditional metrics of openness and accountability, a declaration and guidance for action plans that emphasises comprehensiveness and recognises the coexistence of distinct agendas, and a chorus of civil society activities providing input and oversight of the process, each with their own issue areas and interests. These conditions thus decrease the likelihood that governments can easily substitute show for substance.

The OGP has measures that are contextualised, and the data required to monitor progress is neatly housed and centralised on the OGP website.⁸ It is the independence of the review mechanism that is most striking – not only as a result of the Independent Reporting Mechanism, but also arising from the capacity of engaged civil society and external persons to monitor and contribute to implementation. The OGP's Independent Reporting Mechanism functions by producing biannual independent progress reports for each country participating in the OGP, conducted by independent consultants.

POLITICAL CONSIDERATIONS

As acknowledged above, when considering political influences on participation, interstate review mechanisms obviously do not exist in a diplomatic vacuum. This means that there are external political influences – outside the internal mechanisms and methods – that may affect the functioning of the review process. The procedures adopted, however, can exacerbate this external influence.

Who qualifies to participate in a review mechanism is important. The APRM appears to be viewed positively by African states and, by July 2015, 35 of the AU's 54 member states had voluntarily acceded; none has left the process. By comparison, the OECDCA includes only one African country, South Africa, and its selective inclusion of non-EU member states limits its remit. When one considers the importance of good governance for development, it is clear that the African region could strongly benefit from enhanced transparency practices within government.

A useful point for consideration may be the fact that the OGP does not have an institutional home – compared, for instance, with the UPR in the UN, the APRM in the AU or the OECDCA in the OECD. By existing outside such an entity, and having rotating chairs, the membership is not limited by either prescribed participant limits or by political influences on such participation. The OGP's eligibility criteria may be the most significant factor in limiting participation. As of July 2015, only eight African countries were participating, and only a few more are eligible or near eligible to join.⁹ However, South Africa was a founding member and takes over the position of chair of the OGP in October 2015. The global nature of the OGP provides an opportunity for shared learning and collaboration across alternative multinational connections, such as the Non-Aligned Movement and the India-Brazil-South Africa Dialogue Forum.

HARMONISATION

There is clearly value to the OGP. However, it exists alongside other mechanisms, which raises the question of whether the processes could be harmonised. The counter-argument, which suggests that participation in multiple review mechanisms should be avoided because of burdensome reporting, is simply not tenable. As noted by Gruzd, 'The focus should be on implementing commitments; then the reporting becomes simple. It is when policies are not implemented and excuses are made that reporting becomes onerous.'¹⁰

In reality, there are express benefits to participation in multiple forms of review. In a comparison between the OECDCA and the APRM, it was noted that:¹¹

The peer review is not 'the only game in town', on which everything depends. If this was the case, then it is easy to see that there would be enormous incentives for political interference in the technical phases, and even the political discussion ... would be poisoned by the amount at stake. But because it is one review among many that are conducted routinely, so to speak, by the reviewed country's civil society, it is a valuable input to the dialogue. Competing voices are important. It is through its influence on domestic public opinion, as one voice

in a pluralistic dialogue, that OECD peer reviews seem to have their biggest impact.

Comparisons and critiques of harmonisation across review mechanisms have pre-dated the OGP. However, the OGP's structure perhaps makes it one of the simplest review mechanisms to harmonise with other mechanisms. This is because governments, together with civil society, create their own commitments – and can therefore develop them with express reference to the other review mechanisms that that country is participating in, while bearing in mind their obligation to stretch current practice as a requirement of the OGP.

The OGP's ability to reflect on other mechanisms highlights the importance of informed public participation in drafting commitments in a national context. If the state that is being reviewed hopes for synergy with other mechanisms under which it has existing obligations, it has an active duty to raise awareness of those obligations before the OGP National Action Plan is tabled. It is at liberty to include existing commitments, as long as it includes some new ambitions in the OGP context.

The APRM and the UPR clearly touch on issues of importance for the OECD and the OGP. However, their broad scope means they cannot produce effective implementation of recommendations on transparency emerging from those areas in a way that the more focused review mechanisms can.

CONCLUSION

There is an inherent flexibility in the OGP process, which means that harmonisation with existing review mechanisms is possible. And, perhaps more importantly, harmonisation is also desirable. The nature of the process creates the potential for impactful and implementable changes to advance forms of transparency, accountability and good governance that are also capable of responding quickly to changing contexts. The OGP should not be seen as an extra burden, but instead as a way of enhancing national commitments to better, more open governance, and promoting and protecting human rights.

ENDNOTES

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- 2 Much of the research in this piece is based on Razzano G (ed.), *The Open Government Partnership and Other Review Mechanisms* (1st edn.). South Africa: Open Democracy Advice Centre, 2015.
- 3 These are Brazil, Indonesia, Mexico, Norway, the Philippines, South Africa, the UK and the US.
- 4 Pagani F, 'Peer Review: A tool for cooperation and change – An analysis of the OECD working method', OECD SG/LEG, 2002, p. 1, <http://www.oecd.org/dataoecd/33/16/1955285.pdf>.
- 5 See, for instance, the UN Watch report on Cuba's abuse of the UPR process, <http://blog.unwatch.org/wp-content/uploads/How-Cuba-Hijacked-its-UPR.pdf>.
- 6 McMahon E, K Busia & M Ascherio, 'Comparing peer reviews: The Universal Periodic Review of the UN Human Rights Council and the African Peer Review Mechanism', *African and Asian Studies*, 12, 2013, pp. 266–289, 267.
- 7 Weinstein J & J Goldstein, 'The benefits of a big tent: Opening up government in developing countries', *UCLA Law Review Disc.* 38, 2012, pp. 38–48.
- 8 See, for example, OGP (Open Government Partnership), 'OGP explorer', <http://www.opengovpartnership.org/explorer/landing>.
- 9 Ghana, Kenya, Liberia, Malawi, Sierra Leone, South Africa, Tanzania and Tunisia participate in the OGP. Angola, Cape Verde, Ethiopia, Namibia, Nigeria and Uganda are eligible, and Morocco, Mozambique, Guinea, Niger, Senegal and Zambia are near eligible.
- 10 Gruzd S, quoted in Razzano, *op. cit.*, p. 26.
- 11 Kanbur R, 'The African Peer Review Mechanism (APRM): An assessment of concept and design', Cornell University Online, 2004, p. 7, <http://www.arts.cornell.edu/poverty/kanbur/APRM.pdf>.

The Governance and APRM Programme is funded by the Swiss Agency for Development and Cooperation. SAIIA gratefully acknowledges this support.

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