CENTRE FOR LAW AND DEMOCRACY

Canada

Open Government Partnership (OGP) Progress Review of First Year Implementation of the Action Plan

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Introduction

The Open Government Partnership (OGP) is a global initiative to promote greater transparency, participation and accountability in government. Founded by Presidents Obama of the United States and Rousseff of Brazil, it brings together countries which meet minimum openness standards and which agree to make further commitments to openness. Canada announced its intention to join the OGP in September 2011 and is now an active member of the initiative.

A key OGP activity is the adoption by members of action plans, which set out their commitments in the relevant areas, and the process of reporting on the implementation or delivery of those action plans. The formal OGP process for review of countries' implementation of their action plans involves self-reporting by government, following consultation with local stakeholders, and an independent report by the OGP's Independent Reporting Mechanism (IRM). The latter is overseen by an independent experts panel and country reports are developed in collaboration with local experts. The first IRM progress report, on South Africa, was published recently.[1]

Canada presented its first Action Plan publicly at the 2nd Annual OGP Conference in Brasilia, Brazil in April 2012.[2] This Progress Review provides an assessment of the first year and one half of implementation of that Action Plan. The government of Canada launched a Consultation on Year-1 Progress on 19 August 2013,[3] and this Progress Review is the Centre for Law and Democracy's (CLD) submission to that Consultation. As part of the Consultation, the Government of Canada posted online an initial statement of progress in implementing the Action Plan, Canada's Action Plan on Open Government – Key Year-1 Progress Highlights.[4]

The structure of this Progress Report is based in part on the standard requirements of the OGP, and it is also drawn in part from the South African progress report and in part from a 2012 CLD publication, *Making the OGP Effective: Guidelines for Assessing OGP Action Plans*,[5] which is designed to help OGP stakeholders assess the quality of

[1] Available at: http://gallery.mailchimp.com/fa148540e647df9e336f89e31/files/IRM_South_Africa_Progress_Report.pdf.
[2] Available at: http://www.opengovpartnership.org/sites/www.opengovpartnership.org/files/country_action_plans/Canada%27s%20Action%20Plan%20on%20Open%20Government%20-%20Plan%20d%27action%20du%20Canada%20sur%20le%20gouvernement%20ouvert_0.pdf.
[3] See http://data.gc.ca/eng/consultations/year1.
[4] Available at: http://data.gc.ca/eng/canadas-action-plan-open-government-key-year-1-progress-highlights.
[5] Available at: http://www.law-democracy.org/live/ogp-guidelines-for-assessing-ogp-action-plans/.

OGP Action Plans. One of the key principles of the OGP is that the process of developing and implementing action plans should be highly consultative. The first section of this Progress Report thus focuses on the consultations that have taken place around Canada's Action Plan. It is restricted to general consultations, while the specific consultations around each particular Action Plan commitment are examined in the part of the Report on that commitment.

The second section of this Report looks at the question of ambition within Canada's Action Plan. Formally, within the OGP, countries are free to adopt any action plan they like, although the commitments in the plan are supposed to be new (i.e. countries are not supposed to just recycle previous commitments but are required to make new pledges). However, leading stakeholders in and observers of the OGP soon realised that, absent at least reasonably ambitious action plans, the primary aims of the OGP would be thwarted. Among other measures to address this, the reporting process will look at the level of ambition expressed in action plans. Thus, the South African progress report includes a section titled "Did it matter" as part of its assessment of each separate commitment.

The third, and largest, section of this Report provides an assessment of each of the 12 separate commitments included in Canada's Action Plan. Each of these will follow a roughly similar outline, starting by describing the commitment, then assess its inherent qualities (is it relevant to the OGP priorities, and is it concrete, specific, time bound and new), describe what happened and assess any process of consultation that took place.

1. Consultations

The OPG has more detailed rules on the minimum requirements for consultation on action plans than on almost any other obligation for participating States. These are set out in Addendum C of the Articles of Governance, adopted 16 April 2012,[6] and entitled Guidelines for Public Consultation on Country Commitments. Specifically, this Addendum states:

> OGP participating governments commit to developing their country action plans through a multi-stakeholder process, with the active engagement of citizens and civil society. Taking account of relevant national laws and policies, OGP participants agree to develop their country commitments according to the following principles:
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> - Countries are to make the details of their public consultation process and timeline available (online at minimum) prior to the consultation, providing

[6] Available at: http://www.opengovpartnership.org/sites/www.opengovpartnership.org/files/page_files/OGP%20Articles%20Final%20for%20Posting_04.16.12_0.pdf.

public notice at least two weeks in advance of any given consultation, to maximize public participation.
- Countries are to consult widely with the national community, including civil society and the private sector; seek out a diverse range of views and; make a summary of the public consultation and all individual written comment submissions available online.
- Countries are to undertake OGP awareness raising activities to enhance public participation in the consultation.
- Countries are to consult the population with sufficient forewarning and through a variety of mechanisms—including online and through in-person meetings—to ensure the accessibility of opportunities for citizens to engage.
- Countries are to identify a forum to enable regular multi-stakeholder consultation on OGP implementation—this can be an existing entity or a new one.

Countries are to report on their consultation efforts as part of the self-assessment, and the independent reporting mechanism is to also examine the application of these principles in practice.

For its part, the Government of Canada describes the four elements of its consultation to develop its Action Plan in its Open Government Consultation Report[7] as follows:

i) Between 6 December 2011 and 16 January 2012, an open online consultation was held which put forward three questions for participants to answer. There were about 260 responses to this consultation.
ii) On 15 December 2011, Minister Tony Clement, President of the Treasury Board, hosted a Twitter Town Hall, during which some 550 tweets were received (it is not clear how many people participated).
iii) In January 2012, a meeting was held with federal, provincial and territorial clerks of legislative assemblies and Cabinet secretaries.
iv) On 28 February 2012, Minister Clement held a teleconference with the Advisory Panel on Open Government, which is comprised of national and international experts on open government drawn from civil society, academia and the private sector.

It may be noted that, inasmuch as the focus of the OGP consultation requirements is on "citizens and civil society", the third element, which was an internal government process, does not really qualify as part of the consultation process.

A formal assessment against the OGP requirements noted above leads to the following conclusions:

- Prior notice was given of consultations and so the first requirement has been met.

[7] Available at: http://data.gc.ca/eng/open-government-consultation-report.

- The three public elements of the consultation hardly meet the OGP standard of consulting widely with the national community. A Twitter Town Hall, while innovative, is a limited forum for discussing substantive policy issues. The Advisory Panel meeting is an important part of the process, and formally required by the OGP, but only one meeting was held. Otherwise, the only general opportunity to get involved was the online consultation, which elicited only around 260 responses, hardly a large number given the all encompassing nature of this issue and its importance to all Canadians. Also, no summary of the consultation is available and individual submissions are not available online, although there is a record of the 15 December 2011 Twitter Town Hall.
- As far as we are aware, there were no OGP awareness-raising activities, although there was some discussion about the issue in the media, as would always be the case with a significant government initiative like this.
- While there were online consultations, there were no in-person meetings.
- The government has appointed an Advisory Panel as a "forum to enable regular multi-stakeholder consultation on OGP implementation", thereby meeting this requirement. However, the Panel only met once prior to the adoption of the Action Plan.

Otherwise, we note that the government took a fairly controlling approach to the online consultation, publishing a set of questions which were supposed to be answered, rather than pursuing a more open format. Importantly, no draft plan was ever published for comment, so that while individuals could put forward ideas for inclusion in a future plan, they could not provide feedback on the government's proposals. We consider the publication of a draft plan for comment to be a crucial element of a proper consultation process.

The consultation process around implementation of the Action Plan has similarly been very limited. The government has posted a document, Canada's Action Plan on Open Government – Key Year-1 Progress Highlights, which provides a summary of what the government has done in relation to each commitment. So far, however, the only element has been an online consultation. This formally started on 19 August, but information about it has not been widely disseminated and we could not find any official announcement about it online,[8] so that rather few comments appear to have been provided so far.[9] It was originally due to end on 9 September, but this was extended to 16 September. Like the previous consultation, in this case the government again posed questions to be answered instead of adopting a more open approach, which elicited some criticism from those who have posted comments on the website page.

[8] There were complaints about this in the media. See, for example: http://www.huffingtonpost.ca/vincent-gogolek/secret-federal-survey_b_3869401.html.
[9] As of the time of writing, less than 30 people had posted comments.

Recommendation:

- The process of consultation around the implementation of the OGP Action Plan and the development of any future plan should be far more robust

2. Ambition

It is difficult to provide a truly objective assessment of the level of ambition in an action plan, in part because there is really nothing to compare it to. At least one of the commitments does not appear to be new, namely the International Aid Transparency Initiative (IATI). Canada formally joined this in November 2011, just after it announced its intention to join the OGP in September 2011, but discussions about joining had been ongoing for some time prior to that. The commitment itself simply involves doing what membership in IATI requires.

One of the commitments, namely Advancing Recordkeeping in the Government of Canada – GCDocs, is arguably not related to the OGP key commitments or Grand Challenges. It is about internal management of information, rather than openness, consultation or improving integrity. Good internal management of information is key to providing information to the public, but it is more of a background tool for this than an actual OGP commitment.

Otherwise, the Year 1 commitments are dominated by technological advances, including:

- Modernizing the Administration of Access to Information (piloting a system for lodging requests for information online);
- Virtual Library (designing a searchable repository of published documents);
- User-Centric Web Services – GCWeb (more organised and accessible web presence);
- Data.gc.ca (continuing to expand the number of datasets online and modernising the portal);
- Government of Canada Resource Management Data (making resource management and performance data available through the open data portal);
- Consulting Canadians (developing a standardised technological platform for consulting with Canadians); and
- Open Regulation (posting forward looking regulatory plans online).

While all of these are valuable initiatives, they reflect an overemphasis on technological approaches, arguably to the detriment of other types of initiatives

(these seven, along with the two others mentioned above, represent nine out of the twelve Action Plan commitments). Furthermore, these are all relatively easy, natural commitments, and very much in line with the direction which Canada, along with all developed countries, was moving in and would be expected to move in regardless of the OGP.

A number of the commitments have not yet produced any tangible results which the public can assess. This is the case, for example, with the following commitments:

- Directive on Open Government (no draft has been released publicly);
- Virtual Library (no plan or design has been released publicly);
- GCDoc (which is an internal government record management system);
- GCWeb (the new website is being developed but has not been made available yet, although some other products have been released); and
- Consulting Canadians (the citizen engagement platform is still being developed, although some concrete products have been released).

In general, these are in accordance with the schedule set out in the Action Plan (i.e. they do not represent delays), but the fact that there has been no public delivery for over one-third of all Action Plan commitments goes to the question of the modest level of ambition reflected in the plan.

While governments are free to identify their own priority commitments for the OGP, one notable shortcoming in the Canadian Action Plan is the failure to commit to reform of the Access to Information Act. The Act was passed in 1982 and has not been comprehensively reviewed since that time. This is despite the fact that there have been calls from a very wide range of stakeholders to reform it, including in a letter from all of the information commissioners across Canada as a submission on the OGP Action Plan.[10] An objective assessment of the Act using the Right to Information Rating methodology, prepared by the Centre for law and Democracy and Access Info Europe, shows that it is a very weak law.[11] It is clear that the Act needs to be reformed to bring it into line with modern right to information standards.

It may also be noted that rather modest progress has been made on several of the commitments, even though the Action Plan was adopted fully one and one-half years ago. One of the two foundational commitments – namely the Open Government License – has been delivered, but there have been only very limited consultations on the other one – namely the Open Government Directive – although ongoing consultations were promised in Year 1 of the Plan. Only three departments are so

[10] Available at: http://www.oic-ci.gc.ca/eng/rr-sl-odi-adi_2012_1.aspx.
[11] The RTI Rating is available at: http://www.rti-rating.org/index.html . At the time of writing, the Canadian Act scored only 79 out of a possible 150 points, putting it in a tie for 56th place globally out of 93 countries with access to information laws.

far participating in the pilot for online requests, design of the Virtual Library has only begun, the standards for internal management of documents remains at the draft stage, only five departments are deploying the new GCDocs system, the new GCWeb remains at the development stage and new approaches for consultation remain at the pilot stage. The government's Year-1 Progress Highlights makes several promises of actions to be expected in the fall or winter of 2013 which may represent an increase in the pace of implementation, or it may represent a perceived need to promise concrete new developments in the report.

Recommendations:

- A more ambitious Action Plan should be developed which includes a wider range of types of commitments and which is less heavily weighted towards technological solutions.
- The pace of implementation of the commitments should be increased as a way of enhancing the level of ambition of the Action Plan.
- The new Action Plan should include a commitment to review and amend the Access to Information Act to bring it into line with modern right to information standards.

3. The Commitments

This section of the report describes and evaluates the commitments in Canada's Action Plan, as well as progress made in implementing them. As a general comment, neither the Action Plan nor the Progress Highlights report by the government provide much forward-looking information about implementation plans for Years 2 and 3. It is very important to provide this sort of information to the public on an ongoing (say, annual) basis. Every section on the commitments in the Progress Highlights promises more information on Year 2 and 3 plans in March 2014, when a new action plan is to be adopted. Given the current vagueness of many Year 2 and 3 activities, it does not make sense to wait for another one half year to provide this information. At least some more detailed information on the activities for Years 2 and 3 should thus be included in the government's formal report to OGP on implementation of its Action Plan, and the new action plan may include more details on this.

3.1 Open Government Directive

This commitment is to develop a directive to provide guidance to government departments on the proactive disclosure of information. The commitment lacks a

specific Year 1 activity, but it does state that ongoing consultations with the Advisory Panel will inform the development of the directive. This commitment is new, relevant, reasonably time lined (the directive is to be progressively implemented in Years 2 and 3) and concrete. It is not very specific, apart from the general focus on proactive disclosure, but this is presumably so as to allow for flexibility as to the content of the directive.

So far, one consultation with the Panel has taken place, in March 2013. No draft directive was circulated at that meeting, but some notes on core concepts for inclusion in the directive were provided. This represents relatively limited progress on this commitment over one and one-half years. It is also somewhat concerning that an initiative as important as this is apparently not going to be the subject of broader consultation with Canadians. According to the government's Key Year-1 Progress Highlights, a draft of the directive is now being considered within government and it will be published later this year.

3.2 Open Government License

This commitment involves the preparation of a standard open licence broadly permitting individuals to reuse government information. This commitment is new, time lined (to be delivered in Year 1), concrete, specific and relevant. The licence was posted online for comment on 26 November 2012 and on 11 December 2012 Minister Clement held a Twitter Town Hall to discuss the draft licence. A summary of the comments was made available online.[12] The licence itself was released on 18 June 2013 and has now been adopted by three provinces and some cities.

This commitment has thus been fully delivered, and after a consultation that was more substantive and procedurally sound (especially inasmuch as the draft licence was made available as part of the consultation process and the comments received were posted online) than any other consultation undertaken by Canada regarding its participation in the OGP. It is also an important development for Canadians.

3.3 Modernizing the Administration of Access to Information

This commitment involves "modernizing and centralizing the platforms supporting the administration of Access to Information". In Year 1, the commitment involves piloting online request and payment systems of a number of departments, with the aim of making this capacity available in all departments "as soon as feasible". In Years 2 and 3, summaries of completed access requests will be searchable online and the government "will focus on the design and implementation of a standardized, modern, ATI solution".

[12] Available at: http://data.gc.ca/eng/open-government-licence-consultation-report.

Apart from the two concrete actions stipulated – namely online requests and searchable summaries – this commitment is extremely vague. Indeed, it is not possible to divine exactly what it involves. It is also not properly time lined, with the rollout of online requesting being "as soon as feasible". While enabling online requests is a positive development, we note that it is very modest indeed compared to the numerous reform needs in terms of the Access to Information Act. It is also long overdue, with most other developed countries and many less developed countries already providing this option at all public bodies.

Despite its modest objectives, delivery of this commitment has been very limited indeed, with the online requests being piloted in only three departments, with four more supposed to join later this year. The strong level of interest in this service is demonstrated by the fact that nearly 8,000 requests were received by the three participating departments in just the first three months (30-40,000 requests are lodged annually at the federal level in Canada). The system works well and the vast majority of those rating the service say it is easy to use.

Summaries of completed requests are now available in a searchable format online. This is a positive development which should benefit both requesters and officials (by reducing the number of repeat requests).

3.4 Virtual Library

This commitment involves the development of a searchable online repository of published government of Canada documents. Design will begin in Year 1 and a pilot will be launched in Years 2 and 3. This is a new, concrete, relevant and time lined commitment. According to the government's Progress Highlights, a preliminary conceptual design has been prepared for purposes of internal consultation. The commitment involves seeking public input, but this has not yet started so that progress on implementing this commitment can only be described as modest. Once again, more information is promised later this year.

3.5 International Aid Transparency Initiative (IATI)

This commitment essentially involves complying with IATI requirements regarding publication of information about international assistance. The Year 1 commitment was to review IATI requirements, with reporting starting in Years 2 and 3. IATI has very precise and detailed reporting requirements and in this way this commitment can be said to be concrete and specific. It is also relevant and time lined, although, as noted above, it barely qualifies as a new commitment.

In practice, the Year 2 and 3 commitments were already being delivered as early as October 2012, in accordance with the requirements of IATI, which suggests that plans to implement the commitment had been made earlier.

3.6 Opening Government of Canada Records

This commitment involves increasing access to federal documents in Year 1 by removing restrictions on access "wherever possible". Year 1 will also see the development of a mandatory policy on classification to reduce the volume of classified documents. In Years 2 and 3, classified documents will progressively be made available. This commitment lacks any specifics about what approach and/or standards will be used to drive the declassification of documents. As a result, although it is formally time lined, this means little since any amount of declassification would formally comply with the commitment.

According to the Progress Highlights, some 3.2 million pages have been released, but the document does not describe what sorts of information is in these pages or how such a massive process of declassification was undertaken. In general, when governments declassify at that sort of volume, this is done in a routine way (for example, all documents of a certain type, or documents of a certain type which reach a certain age) rather than by amending classification standards or approach.

A draft policy on standardising classification has been prepared for internal consultations and, yet again, is due to be released later this year. No public consultations have yet been held on this important document, which was supposed to have been completed in Year 1.

3.7 Advancing Recordkeeping in the Government of Canada – GCDocs

This commitment overlaps with the previous commitment, promising a "government-wide solution for records and documents management". In Year 1, "wave one of an enterprise solution for electronic record and document management" will be released, and this will be deployed across government in Years 2 and 3. Although the language is very unclear, it seems that what is being promised is a standardised system for electronic record management.

According to the Progress Highlights, five departments are using the system and another 22 have agreed to use it and are at some stage of implementation. As noted above, we view this as essentially an internal administrative system rather than a proper OGP commitment *per se*.

3.8 User-Centric Web Services – GCWeb

This commitment involves the development of a "more organized and accessible web presence" for the government. Year 1 involves the "development of an approach for a new user-centric, consolidated web presence". Once again, what seems to be a fairly simply commitment – namely the development of a new website

or online platform – is wrapped up in confusing language. Years 2 and 3 will see the new platform being implemented. According to the Progress Highlights, the platform is currently being developed, suggesting that this is another commitment that the government is behind on. However, some progress has been made in terms of optimising websites for mobile devices, the development of an open source code library to facilitate interoperability of websites and the development of a tool to search the whole system of government websites, which is now being implemented. No public consultations are reported as having been held on this very important commitment.

3.9 Data.gc.ca

This commitment involves expanding the number of datasets that are made available via this government website, launching a next generation platform for the website and increasing standardisation of data. No indication is provided of how much expansion is envisaged, rendering this commitment very non-specific and making it difficult to assess whether or not it is being met. The same is true of the part of the commitment which involves improving standardisation of data. Furthermore, the April 2012 Action Plan refers to 272,000 unique data sets being available at that time, while the August 2013 Progress Highlights suggests only 180,000 datasets are available. This is problematical given that a key 'new' element of this commitment is precisely making more datasets available.

Several roundtable discussions have been held across Canada on the design of the next generation website and this has already been launched, ahead of schedule.

3.10 Government of Canada Resource Management Data

This commitment involves publishing resource allocation and performance management information online in Year 1 and providing enhanced search and visualisation tools in Years 2 and 3. The Year 1 commitment, at least, is specific, although the commitment for Years 2 and 3 is vague. The Progress Highlights notes that a database containing this data was launched in April 2013. However, this only contains rather general financial information for the last three years, which is a rather modest achievement.

3.11 Consulting Canadians

This commitment promises a standardised "Web 2.0 citizen engagement platform". Year 1 will see a standard approach to consultations via social media and the piloting of a "crowdsourcing initiative" to involve Canadians in developing ideas for online consultations. Years 2 and 3 will see the enabling of "common online tools" to support consultation. The Year 1 commitment is specific but the commitment for Years 2 and 3 is very vague.

According to Progress Highlights, the platform is still being developed, so implementation of this commitment would appear to be behind schedule. However, in April 2013, a new standard for the government's presence on social media was adopted. The report claims some "crowdsourcing and consultation solutions have been piloted", but the examples given are limited in scope and not really in line with the crowdsourcing initiative promised (i.e. it would appear that this part of the commitment has not been met and the examples provided are really examples of other crowdsourcing initiatives).

It is worth recalling that consultation around the OGP is one of the areas where the government of Canada has performed poorly. It would make sense to address this key need first, before attempting to standardise the approach to online consultation.

3.12 Open Regulation

This commitment involves the forward posting of regulatory plans by regulatory bodies in Year 1, allowing for engagement by Canadians on those plans. Years 2 and 3 will see the ongoing simplification of "engagement activities to support more efficient and responsive regulatory activities". The Year 1 commitment is concrete but, once again, the commitment for Years 2 and 3 is very vague. According to the Progress Highlights, 32 regulatory plans and 24 new service standards have been posted online. This is a valuable initiative but, as the numbers suggest, it is fairly modest in scope.

Recommendations:

- The government should provide far more detailed information about Years 2 and 3 implementation plans in its formal report to OGP on Year 1 implementation of the Action Plan.
- The government should move forward and publish the draft Open Government Directive, which should then be the subject of broad consultation before being finally adopted.
- The government should clarify what improvements it is planning to introduce to the access to information system beyond enabling online requests and posting summaries of responses to requests online. This should be far more ambitious than the current scope of activities, given the significant problems with the access to information system. Electronic request capacity should be rolled out across the government soon, say by the end of Year 2.
- Consultations on the virtual library should begin as soon as possible.
- The government should make public information regarding how it is

approaching the issue of declassifying documents.
- Consultations should be held around the new classification standard, with a view to adopting a final version as soon as possible.
- A plan or proposal for GCWeb should be published as soon as possible and public consultations should be undertaken on this.
- Consultations should be held on the data.gov.ca website and, following this, the government should clarify how it is making choices around which datasets it is prioritising for uploading.
- More types of information should be uploaded as part of the Resource Management Data commitment, including performance assessments.
- The government should make a serious effort to improve its consultation around the OGP as part of its programme of improving consultations with Canadians.

Conclusion

The OGP is an important tool for improving government openness, citizen engagement and public integrity. The Action Plan process lies at the very heart of the OGP. If countries adopt clear, strong action plans after engaging with the public around what they are proposing to do, and then implement them properly, the OGP will be a success. If the action plans are weak, lack ambition, have not been the subject of proper consultations or are not implemented, the OGP will fail.

Canada's first Action Plan is relatively weak (i.e. it lacks ambition), especially given the significant capacity of the government of Canada to undertake relevant initiatives. It relies too heavily on technological improvements to the way information is made available, to the detriment of other types of initiatives, and it grants the government too long to achieve the commitments. It also fails to include one activity which almost all informed observers agree is a key priority in this area, namely the updating and reform of the Access to Information Act.

One reason for this may be that it was adopted without a proper process of consultation with Canadians. A key failing in this regard was the fact that the government failed to publish a draft plan and allow for public feedback on its proposals. So far, the process of consultation around implementation of the Plan has been similarly weak.

It is incumbent on the government to do better in fulfilling the goals of the OGP, which aims to bolster democracy in key ways. We urge the government to engage in fulsome consultation as part of the process of reporting on implementation but,

even more importantly, as it implements the Action Plan commitments and as it develops its second Action Plan, due to be published in March 2014.