

Friday 29 March 2019

Has membership of the Open Government Partnership made any difference to open government in New Zealand? or:

What has New Zealand's membership of the Open Government Partnership achieved?

Thank you, Rae

I have been the Open Government Partnership's Independent reviewer of the NZ government's work developing and implementing its Open Government Partnership membership commitments since March 2017. Earlier as a public servant I was involved in implementing one of these commitments, so I have experience on both sides of this work. I have also spent many years as a private sector researcher using government information and then almost twenty years trying to make government's non-personal information easier for you and me, the public, to find, use and re-use.

Slide 2: Today I will tell you about the Open Government Partnership, what membership means, what the NZ govt has committed to doing and has done, and then conclude by assessing whether NZ's OGP membership has opened up govt in NZ. That assessment is based on my research and analysis, not my personal views.

I will do my best not to use acronyms, except for OGP, the acronym for the Open Government Partnership and IRM – the independent reporting mechanism of the Open Government Partnership. That is what I am – an IRM! Which sounds like a robot! But I am not a robot!

So what is the OGP? See Slide 3

The OGP was established in 2011 following discussions on the fringes of the United Nations in New York during which Heads of State from 8 founding governments – Brazil, Indonesia, Mexico, Norway, Philippines, South Africa, UK and USA endorsed the Open Government Declaration and announced their country action plans along with an equal number of civil society leaders. No doubt you are absorbing the names of those countries and considering the political changes in several of them and what that has mean for their democracy. The eight founding members also welcomed the commitment of 38 governments to join OGP. In 2019 there are 70 member countries and 20 sub-national members.

Its role is to provide a platform for reformers inside and outside of governments around the world to develop actual initiatives that promote transparency, empower citizens, fight corruption and harness new technologies to strengthen governance.

It looks ahead to a global culture where open government empowers and delivers for citizens, and advances the ideals of open and participatory 21st century government. For countries such as New Zealand which have long traditions of representative democracy and engagement with civil society through electoral and parliamentary processes, this introduces significant cultural and procedural change.

Slide 4: OGP Members must:

- meet eligibility criteria covering Fiscal Transparency, Access to Information, Asset Disclosures, and Citizen Engagement
- endorse the Open Government Declaration

- develop two-year country action plans with the public and implement them; and
- commit to independent reporting on their progress

Slide 5: Here are the current member countries - the light green are developing 2-yearly action plans and the dark green are implementing them. Note the Asia/Pacific countries – Australia, NZ, South Korea, Sri Lanka, Philippines, Indonesia, Mongolia and Papua New Guinea. . A stand-out example of a sub-national member is Austin, Texas – see **Slide 6**.

Slide 7: So – OGP membership commits governments to improve access to information about their activities, create collaborative government policy and services, improve the mechanisms and processes that call upon governments to justify their actions, and, where appropriate, use technology to do this better.

Slide 8: The SSC has developed a separate OGP site as well as having information on its own site. This is very good news as for some time OGP information was spread over three sites, including the NZ section on OGP's own site – opengovpartnership.org. It is still a bit confusing, actually.

- NZ joined in 2013. John Key responded to an invitation by Sir Francis Maude, then Minister for the UK Cabinet Office
- led initially by Ministry of Justice as it was seen as a constitutional commitment; then moved to the State Services Commission to its Integrity, Ethics and Standards team
- pays annual fee of \$200,000
- advised by invited NZ's multi-stakeholder forum, the Expert Advisory Panel of 6 civil society members; 2 positions currently vacant – SSC is currently inviting expressions of interest
- now implementing NZ's third national action plan which was released in December 2018.

Slide 9. Here is the 2018-2020 action plan released in December 2018.

Slide 10: I am NZ's second IRM reviewer. Steven Price, VUW law lecturer and media lawyer, reviewed the first action plan. I have reviewed the second action plan and have just submitted to the OGP a draft Design Report. It is a rigorous methodology used by all reviewers requiring interviews with members of the public and experts about how the design process went, whether the commitments, if fully implemented, would meet the open government issues they raised; progress reports from government agencies carrying out the work and finally, an assessment of whether or not they opened up government

Slide 11: Membership of the OGP requires rigour and perseverance by all parties: active government leadership and action, active civil society involvement, including by the multi-stakeholder forum, and tenacious reporting by the Independent Review Mechanism.

So I've described the OGP and how NZ became a member – I'll now talk about international ratings of NZ. Those of you who were here a couple of weeks ago listening to Nicky Hager, will recall his reply to a question about NZ's high position in Transparency International's Corruption Perception's Index. Nicky said that NZ is "Blessed". Since then, our NZ Moslem community has suffered the tragedy of a massacre of a scale that has redefined our country and our values. I would like to offer my sympathy and also endorse how our PM has offered our love to our Moslem community.

Slide 12 – NZ does have a high baseline of openness. We are a representative democracy, we have a tradition of civic engagement in three-yearly national elections (79.8% of enrolled electors voted in

2017) and in local elections (43% voted in 2016). Civil society groups and individuals routinely participate in parliamentary and local legislative processes.

The 2018 Democracy Index identifies us as one of twenty full democracies in the world, ranking us 4th out of 167 countries, and scoring us 9.26 out of 10. Our ratings were: Electoral process and pluralism: 10.00; Civil liberties: 10.00; Functioning of government: 9.29. The Freedom in the World Report scores New Zealand at 100% for freedom, political rights and civil liberties.ⁱ

We rank highly on international indices measuring transparency, anti-corruption and other good governance ratings. We are second in the Transparency International Corruption Perceptions Index.ⁱⁱ TINZ observed, when releasing the 2018 results in January this year that “New Zealand’s drop in ranking is primarily due to poorer results from the survey conducted by one of the 13 sources of the TI-CPI, the World Economic Forum’s Executive Opinion Survey. Because of the closeness of the TI-CPI values amongst the top-ranked group of countries, it is unclear if this change for New Zealand is a one-time deviation or a warning from executives of emerging concerns here”.

The World Bank’s Worldwide Governance Indicators for 2019 rank us nearly at the 100th percentile on indicators such as voice and accountability, political stability, regulatory quality, rule of law and controlling corruption.ⁱⁱⁱ We are first equal with South Africa in the Open Budget Index, scoring 89% for transparency and 78% for public oversight

Slide 13: But further investigation indicates improvement is needed:

New Zealand rates 51st out of 123 countries in the Global Right to Information (RTI) rating. Interestingly, despite our Official Information Act (OIA) being enacted in 1982, it scores highest among developed, English-speaking countries and is one of very few older laws to score in the top quarter of this rating. However, the RTI notes “its major problems include its limited scope and the fact that it allows information to be classified by other laws”.^{iv}

Our Democracy Index score is lower for Political participation: 8.89 and for Political culture 8.13

Our Open Budget Index score is low at 59% for public participation – even though our score is high internationally, for example, we provide limited opportunities for the public to engage in the budget process.^v

The strongest conclusion from Transparency International New Zealand’s National Integrity System Assessment’s 2013 research was about complacency and lack of commitment to the work required to prevent corruption. Its 2018 emerging findings concluded there is a greater awareness of integrity issues, particularly in government and the public sector, a lesser increase in awareness of the importance of taking steps to build strong integrity systems in the business sector, and little progress on issues that require Parliament to consider its own processes and practices, but there some strengthening of watchdog institutions.^{vi}

The 2018 World Press Freedom Index reported that media freedom continues to thrive, with New Zealand up five places to 8th despite its score actually dropping marginally.^{vii} It found that media pluralism and independence in New Zealand are constantly under threat from moves to concentrate media ownership in ever fewer hands. It noted that political pressure such as the suit that the Deputy Prime Minister brought against two journalists over a leak during the 2017 election campaign posed a threat to the confidentiality of their sources. You will recall the care taken by Ncky Hager to protect the confidentiality of his Operation Burnham source. Public concern continues that media businesses are struggling with funding and regularly reducing staff with consequential risk that, for example, local council meetings are less reported or not at all, with concern expressed to me about potential corruption.^{viii}

Following the second lowest voter turnout since World War II at the 2014 general election, and surveys showing declining trust in government,^{ix} the Electoral Commission and civil society worked to increase youth enrolment and voting at the 2017 election. Election results show increased voter turnout by those aged under 35, but nearly half of those enrolled but not voting were aged under 40.

Slide 14: action plan work with civil society

Slide 15. Commitments signed off by Cabinet. I'm currently preparing the Design report assessing these.

Slide 16. So I'll now report on our research assessing the impact of the commitments already completed

Slide 16: Since 2014, the public and the media have raised consistent open government themes in interviews, online commentary and at public events. Our work is scoped to cover transparency and access to information, civic participation, civic space – freedom of expression, freedom of association, freedom of assembly, balance of powers, especially as it relates to citizen-triggered or citizen-involved oversight institutions, anti-corruption legislation and any major areas of governance concern in NZ. Based on this feedback and the process used to develop the national action plan, the IRM reviewer makes 5 key recommendations about content and process for government to consider when developing the next action plan.

This Word cloud summarises our recommendations: - Official information legislation reform, including extending the OIA to offices of Parliament, whistleblower protection, protected disclosures act, register of beneficial ownership, state of the nation reports on social policy and the environment, open procurement, participatory budgeting, citizens' assembly, co-creation of government policy, political party donations, civics education, linking to the UN Sustainable Development Goals, extending OGP work to local government, wider representation of NZ's diverse society on the Expert Advisory Panel and co-creation of the national action plan right through to the finalisation of commitments and preparation of the Cabinet Paper. I'll pick up how government responded shortly and move now to the work with civil society.

Slide 14: The State Services Commission is very committed to NZ's OGP membership and their Deputy Commissioner, Catherine Williams, is leading this work well. When developing the 2018-2020 National Action Plan they wanted do better than when developing the previous two plans.

This time they led from the front for about 18 months– surveyed people who had been involved in developing the first 2 plans, invited online ideas on what open government matters needed immediate action, held 4 regional meetings following an open invitation and followed that up with a workshop with delegates from those meetings to finalise themes and agree on commitments. Throughout they sought advice from their Expert Advisory Panel. **But** they stopped at the final hurdle – only asked the delegates to prioritise proposals government official presented to them. So a good process until then. Essentially highlights the procedural challenges when a representative democracy moves towards 21st century participatory procedures.

Slide 15. These are the 12 commitments that Cabinet agreed and that government agencies are actively implementing. So has OGP membership opened up government?

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So are they ambitious enough? The OGP is encouraging reform, ambition, commitments with transformational potential. The IRM reports on the 2014-2016 and 2016-2018 plans have similar conclusions:

This action plan draws attention to increased funding for public media and supporting new investigative journalism initiatives. However, except for Radio New Zealand and a small number of locally-owned media outlets, local reporting is minimal, meaning less scrutiny of local government, raising concern that it is now more vulnerable to corruption.^x The BBC's current work sharing local council reporting, data, and video and audio content with the wider local news industry in the United Kingdom is a potential model for New Zealand

Slide ?: These concerns are still outstanding

ⁱ <https://freedomhouse.org/report/freedom-world/2019/new-zealand>, accessed 21 February 2019

ⁱⁱ <https://www.transparency.org.nz/> accessed 20 February 2019.

ⁱⁱⁱ <http://info.worldbank.org/governance/wgi/#reports> accessed 20 February 2019.

^{iv} Centre for Law and Democracy. <https://www.rti-rating.org/country-data/New%20Zealand/>, accessed 28 January 2019. RTI ratings measure the legal framework, not quality of implementation

^v <https://www.internationalbudget.org/open-budget-survey/results-by-country/country-info/?country=nz> accessed 20 February 2019.

^{vi} <https://www.transparency.org.nz/2013-national-integrity-assessment-second-edition/>, accessed 24 February 2019

^{vii} <https://rsf.org/en/new-zealand>, accessed 1 February 2019.

^{viii} See 2018 research on NZ's media: https://www.aut.ac.nz/_data/assets/pdf_file/0013/231511/JMAD-2018-Report.pdf, accessed 24 February 2019.

^{ix} Michael Macaulay, 'New Zealanders' distrust in government growing,' Victoria University, 5 April 2016, <https://www.victoria.ac.nz/news/2016/04/new-zealanders-distrust-in-government-growing>

^x IRM researcher's interview with Simon Chapple, Institute of Governance and Political Studies, 9 January 2019. See also concern about decision making of a by-law: <http://www.scoop.co.nz/stories/HL1902/S00092/lime-told-to-prove-safety-of-e-scooters-or-remove-them.htm>