Open Government in Costa Rica

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BETTER POLICIES FOR BETTER LIVES

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Foreword

The open government principles of transparency, accountability and citizen participation contribute to making sure that the views and needs of all relevant stakeholders are reflected in the policy-making cycle, hence favouring more inclusive socio-economic development. While the numerous benefits of open government initiatives are widely recognised by countries all over the world, Costa Rica has been one of the first to involve the executive, legislative and judicial branches of the state, along with subnational governments, independent institutions and civil society organisations, in the design and implementation of its national open government agenda, thereby moving towards what the OECD defines as an "open state".

In November 2015, the leaders of the four branches of powers, which in Costa Rica are the President of the Republic, the Presidents of the Legislative Assembly, the Supreme Court and the Supreme Electoral Tribunal, co-signed a declaration that represented a commitment to collectively move towards greater openness. The declaration constitutes an important milestone for democracy in Costa Rica and has significant potential to lend greater relevance and impact to the country's future open government initiatives.

The OECD Open Government Review of Costa Rica provides a comprehensive, evidence-based assessment of how the country can make the goal of an open state a reality. It was prepared within the framework of the OECD's broader engagement with Costa Rica, which was recently invited to become a member country, and builds on the recommendations of the 2015 OECD Public Governance Review. The aim of the Review is to assist the government of Costa Rica in the evaluation of its open government efforts, assess the achievements to date and propose actionable recommendations on how to tackle existing challenges, all in order to achieve a more transparent, accountable and responsive public administration and foster inclusive growth. It gives Costa Rican authorities and citizens an overview of the current national institutions, legal framework and policies that support the implementation of open government policies, with a focus on policy co-ordination from the Centre of Government, citizen participation and the

implementation of open government policies at the local level. This Review draws upon the experience of the 35 OECD member countries and on more than 15 years of work of the OECD Secretariat and its Public Governance Committee in the area of open government policies.

The Review argues that the ambitious move towards the establishment of an open state will require legal reforms, greater whole-of-government co-ordination and the active participation of all parts of society. It finds that the various reform efforts - including the adoption of the National Open Government Strategy and the draft law on access to information - are going in the right direction. However, the government should now concentrate on their effective implementation in order to make their transformative impact more widely felt by public officials and citizens alike. The recommendations contained in this review provide a roadmap for Costa Rican authorities in order to effectively transform national objectives into good practices and build a more inclusive country for all.

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Acronyms and abbreviations

AAA	Open Legislative Assembly *(Alianza por una Asamblea Abierta)*
ATI	Access to Information
Caja	Costa Rican Department of Social Security *(Caja Costarricense de Seguro Social)*
CCCI	Cantonal Council for Inter-institutional Co-ordination *(Consejo Cantonal de Coordinación Institucional)*
CGR	Office of the Comptroller General *(Contraloría General de la República)*
CNGA	National Open Government Commission
CoG	Centre of Government
CONAMAJ	National Commission for Improving the Administration of Justice *(Comisión Nacional para el Mejoramiento de la Administración de Justicia)*
CPI	Corruption Perception Index (Transparency International)
CSDG	Civil Service Directorate General
CSR	Civil Service Regime
DGTS	Digital Government Technical Secretariat
DINADECO	National Directorate for Community Development *(Dirección Nacional de Desarrollo Comunal)*
DMCD	Deputy Ministry for Political Affairs and Citizen Dialogue
FDI	Foreign direct investment
FOI	Freedom of Information
GDP	Gross domestic product
HDI	Human Development Index
HRM	Human resources management
ICAI	Costa Rican Institute for Access to Information *(Instituto Costarricence de Accesso a la Información)*
ICE	Costa Rican Institute of Electricity *(Instituto Costarricense de Electricidad)*

IDB	Inter-American Development Bank
INAI	National Institute on Transparency, Access to Information and Protection of Personal Data *(Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales)*
IRM	Independent Reporting Mechanism
ITU	International Telecommunications Union
LAC	Latin America and the Caribbean
M&E	Monitoring and Evaluation
MENA	Middle East and North Africa
MEP	Ministry of Public Education *(Ministerio de Educación Pública)*
MIDEPLAN	Ministry of National Planning and Economic Policy *(Ministerio de Planificación Nacional y Política Económica)*
NDP	National Development Plan
NGO	Non-governmental organisation
OAS	Organization of American States
OG	Open Government
OGP	Open Government Partnership
SDGs	Sustainable Development Goals
UCCAEP	Union of Costa Rican Chambers of Commerce and Associations of the Private Sector *(Unión Costarricense de Cámaras y Asociaciones del Sector Empresarial Privado)*
UNDP	United Nations Development Program

Country profile: Costa Rica

Geography, population and living standards	
Area (km²)[1]	51 100
Population[2]	4 814 000 (2015 est.)
Population density (people per sq. km of land area)[3]	97 (2014)
Urban population[1]	76.8% (2015)
Population growth rate (Annual %)[1]	1.2% (2015 est.)
Life expectancy[2]	79 years (2013)
Adult literacy rate[1]	96.3% (2014)
GDP per capita[2]	USD 9 402 (2014)
UNDP Human Development Report rank[4]	62nd (2013)
Ease of Doing Business Index[2]	102nd out of 189 studied countries (2014)
Government	
State structure[1]	Democratic Republic
Executive[5]	- President elected by popular vote for a four-year term (No immediate re-election) - The President is simultaneously the head of government and head of state
Legislative[1]	Unicameral Parliament (57 seats - *Asamblea Legislativa*) Four-year term with no immediate re-election
Elections[1]	Last presidential and parliamentary elections held on 2 February 2014
Participation rate in last presidential elections in 2014[6]	68%
Political situation[1]	The Government is headed by Luis Guillermo Solis Rivera from the *Partido Acción Ciudadana*. This is the first time this party has won the elections.
Legal system[1]	Civil law system; Legislative acts can be appealed to the Constitutional Chamber of the Supreme Court.
Administrative-territorial structure[1]	Costa Rica is divided into 7 provinces, which are subdivided into 81 cantons or municipalities. These are further divided into 421 districts.
Open government indicators	
UN E-Government Development Index[7] E-Participating sub-index[6]	54th out of 193 (best ranked in Central America) 14th out of 193 (4th best ranked in Latin America, best in Central America)
World Economic Forum's Global Information Technology Report[8]	53rd out of 143 countries ranked
Transparency International Corruption Perception Index[9]	47th out of 175 countries ranked (2014)
Internet users[10]	50.9% (2014 est.)
Access to the Internet at home[9]	46.7% (2013)
Open Government Partnership (OGP) member since[11]	2013
OGP Action Plan	Currently implementing 2nd OGP Action Plan 2015-17

Sources:
1. CIA Factbook (2016), www.cia.gov/library/publications/the-world-factbook/geos/cs.html.
2. World Bank (2016), http://data.worldbank.org/country/costa-rica?display=default.
3. World Bank (2014), http://data.worldbank.org/indicator/EN.POP.DNST.
4. UNDP Human Development Report, http://hdr.undp.org/sites/default/files/Country-Profiles/CRI.pdf.
5. Political Constitution of Costa Rica, www.asamblea.go.cr/SitePages/Inicio.aspx.
6. Tribunal Supremo de Elecciones de Costa Rica (2014), *Elecciones Nacionales Febrero 2014, San José*, www.tse.go.cr/AplicacionVisualizador/datos.aspx.
7. UNPACS, https://publicadministration.un.org/egovkb/Data-Center.
8. World Economic Forum, http://reports.weforum.org/global-information-technology-report-2015/network-readiness-index/.
9. Transparency International, www.transparency.org/cpi2015.
10. Instituto Nacional de Estadística y Censos de Costa Rica, www.inec.go.cr/.
11. Open Government Partnership, www.opengovpartnership.org/country/costa-rica.

Executive summary

Costa Rica has made important progress in defining and implementing its open government agenda. Indeed, the government made the concept of open government one of the guiding principles of its public administration and defined it as one of the three horizontal pillars of its National Development Plan 2015-18. The election of President Solís Rivera in 2014 provided an important impetus to the country's open government movement. In fact, the electoral campaign of Solís Rivera was built around the themes of open government and citizen participation.

Despite relevant progress and the laudable moves to extend collaboration on open government reforms to the other branches of state power, certain challenges remain, and overcoming them will require sustained implementation efforts by all key stakeholders. This *OECD Open Government Review of Costa Rica: Towards an Open State* is intended to provide the Costa Rican government and citizens with an overview of the opportunities and challenges associated with implementing open government reforms and to assist the country in completing the next step in the ongoing move towards the concept of an open state.

The context and drivers of the open state in Costa Rica

A country's cultural, historical, political and socio-economic context never fails to have a profound impact on the design, implementation and evaluation of its open government policies. Costa Rica voter turnout has been very high in recent national presidential elections, and the country is a leader in Central America when it comes to the implementation of information technologies. Moreover, in socio-economic rankings, the country performs comparatively well. However, Costa Rica's relative poverty rate has remained largely unchanged in the past 20 years, unemployment has been rising, and levels of trust in government remain low. An increasingly well-educated, informed, and active civil society is demanding greater participation in the political and policymaking processes.

Costa Rica's National Open Government Strategy defines a whole-of-society open government vision for the country that has significant potential

to guide the elaboration of open government policies in the coming years and help the country in its move towards an open state. Costa Rica is one of the first countries worldwide to have elaborated a National Open Government Policy. The review recommends ensuring that the policy is fully linked to the implementation of the open government component of the National Development Plan.

The enabling environment for an open state in Costa Rica

Robust institutional and legal frameworks are at the heart of a successful implementation of open government policies and initiatives. Like in many OECD countries, the principles of a transparent, accountable and participatory government are enshrined in the Constitution of Costa Rica, which includes a wide range of articles that lay the groundwork for an open state. The Review provides a comprehensive overview of the legal, institutional and policy environment for open government in Costa Rica. Some possible ways to further improve the effective transformation of national objectives into good practices would be to pass an access to information law and make it applicable to the whole public sector, including the institutionally decentralised sector, and to consider adopting a Law on Citizen Participation. The report further recommends enhancing the inclusiveness of the National Open Government Commission.

The implementation of open government policies from the Centre of Government

The "Centre of Government" (CoG) plays a key role in providing leadership and effectively and efficiently co-ordinating open government policy making and implementation. The current administration transferred the responsibility for the country's open government agenda from the Digital Government Technical Secretariat to the Deputy Ministry for Political Affairs and Citizen Dialogue, which is located in the CoG. This change of responsibility reflects not only the relevance of open government policies to his administration. While the change of responsibility and the creation of the National Open Government Commission in 2015 were significant steps forward, there is a need to support the co-ordination and outreach functions of the Deputy Ministry by allocating more human and - financial resources to it. In addition, in order to maximise the impact of the OGP Action Plan and its direct contribution to the National Development Plan (NDP), it would be critical to better link these two strategic documents and to create a monitoring and evaluation system that could support the implementation of both of them.

A focus on citizen participation: from information and consultation to active involvement

Costa Rican citizens have various possibilities for involvement in public affairs, including both ad hoc and permanent mechanisms through which they can influence the decision-making processes. Efforts to identify the needs of indigenous communities and involve them in the policy process have been successfully made by both the Government and by the communities themselves. Furthermore, the country's second OGP Action Plan was designed through a process that showed significant improvements with regard to involving citizens across the country. In addition, fostering citizen engagement features as one of the objectives of Costa Rica's National Development Plan. Efforts need to be stepped up to promote a more widespread culture of civic engagement and participation in public matters through communication strategies, consciousness raising and capacity building activities aimed at both public officials and citizens.

Open government at the local level in Costa Rica

Most of Costa Rica's 81 municipalities have started implementing open government practices. Pockets of excellence exist in different areas of open government all across the Costa Rican territory. For instance, some municipalities have set up their own digital platforms, while others have created new institutional mechanisms for participation, and most are now working on citizen budgets. However, great potential remains to further expand the reach of existing good practices and to enhance their impact, for example by including the subnational level in the National Open Government Policy. Existing good practices from certain municipalities should further be spread to other areas of the administration and across the country. The government should further consider including more municipalities in the OGP Action Plan cycles and give municipalities the opportunity to elaborate concrete commitments to promote open local government in Costa Rica's third OGP Action Plan.

Assessment and recommendations

The Republic of Costa Rica is one of the most stable countries in Latin America, with regular democratic elections since 1953 and a lively and competitive political arena. However, despite this generally positive legacy, citizens have become increasingly dissatisfied with the performance of the most recent executives and have come to voice their concerns by demanding significant public sector reforms to improve the transparency and accountability of the executive branch. To try to meet these demands, the current administration made open government one of the key guiding principles of its electoral programme and has included it as the third pillar of the country's National Development Plan 2015-18. In line with this approach, Costa Rica has developed an ambitious second Open Government Partnership Action Plan for the period of 2015-2017, and in December 2015became one of the first countries worldwide to issue a National Strategy for Open Government.

Accordingly, in response to the government's request, the OECD has produced this *Open Government Review of Costa Rica: Towards an Open State*, to accompany the country's efforts to build a more transparent, participatory and accountable state. The Review includes an in-depth analysis of national open government policies and initiatives and provides concrete recommendations for the implementation of the concept of the open state. The Review covers five main areas: The context and drivers for open government reforms, which discusses the socio-economic and political environment for open government in Costa Rica; The enabling environment for an open state , which examines the legal, institutional and policy arrangements for open government; open government leadership and co-ordination from the Centre of Government , which discusses ways to foster the effective implementation of open government policies; A focus on citizen participation: from information and consultation to active involvement, which assesses existing citizen engagement practices throughout the policy cycle; and open government at the local level in Costa Rica, which analyses open government initiatives taken by municipalities.

The context and drivers of an open state in Costa Rica

A country's cultural, historical, political and socio-economic context always has a profound impact on the design, implementation and evaluation of its open government policies. Factors like turnout in elections, the presence or lack of a strong and independent third sector, the literacy rate and the digital divide all have a direct impact on the quality and effectiveness of policies in the areas of transparency, accountability and citizen participation.

In socio-economic rankings, Costa Rica performs comparatively well. For instance, thanks to decades of high investment by the state in educational programmes, by 2014 the country had achieved a very high adult literacy rate of 96.3%. Costa Rica's continuous economic growth further contributed to social mobility and a growing middle-class. The share of the population belonging to it in fact rose from 18% in 1992 to 40% in 2009. Progress in these indicators since the 1980s has been supported by overall positive economic growth, though with occasional dips, and by relative monetary stability, which together contributed to an important increase in GDP per capita since the mid-1990s.

This relatively positive picture is however troubled by several negative trends, including the fact that Costa Rica's poverty rate has remained largely unchanged for the past 20 years. In 2015, poverty still affected 22.1% of the country's households, while extreme poverty increased from 5.8% in 2010 to 7.2% in 2015. Moreover, unemployment increased from 5% in 2000 to 8.5% in 2013. These negative socio-economic indicators have a direct impact on people's lives and are starting to erode Costa Ricans' confidence in their government. In 2014, according to the Gallup World Poll (2014), only approximately 40% of the Costa Rican population stated that they had trust in their national government. In terms of transparency, according to the 2015 polls of the *Latinobarómetro*, only 7% of Costa Ricans stated that they had the impression that the state was "very transparent", 42% of respondents indicated that it is "not very transparent" and 28% saw no transparency at all.

It is in this context that the current government has started an ambitious move towards increased openness, recognising the contribution that the principles of transparency, accountability and citizen participation can make by improving the quality and impact of national policies and fostering trust in public institutions. Accordingly, Costa Rica has made open government a key transversal axis of its ongoing public sector reform and given it a place among the most important enablers of the country's development agenda. Specifically, in November 2015, the President of the Republic and the Presidents of the other three branches of power (which in Costa Rica are the

legislative, the judiciary and the supreme electoral tribunal) signed a Declaration for the Establishment of an Open State (*Declaración por la Construcción de un Estado Abierto*). In it, they committed to the drafting of a plan of priority actions to "promote a policy of openness, transparency, accountability, participation and innovation in favour of the citizens", to be included in the respective institutional strategic plans and to be evaluated annually. In the declaration, the four institutions further agreed to strengthen existing mechanisms of citizen participation and develop new ones in order to improve the relationship between civil society and policy makers and to provide access to public information through the use of new technologies.

The Declaration for the Establishment of an Open State constitutes an important milestone for democracy and has the potential to mark an historic change in the way open government policies are conceived and implemented, certainly nationally but also hopefully with important repercussions worldwide. However, in order for it have practical, real world effects, the country will now need to reinforce its good will with concrete actions that have measurable impacts on the life on its citizens and on the way its public sector operates and delivers services. This will include much greater involvement in policy making and service delivery on the part of local governments, decentralised institutions, independent state institutions, the business sector, the media, academia and civil society, with these contributions eventually allowing all key stakeholders to join forces and collectively contribute to the building of the open state of Costa Rica.

In addition to the abovementioned Declaration, Costa Rica's strategic vision for an open state is defined in three main documents:

1. Costa Rica's **National Open Government Strategy**, which defines a whole-of-society open government vision for the country and has significant potential to guide the elaboration of open government policies over the coming years to and help the country in its move towards an open state. Costa Rica is one of the first countries worldwide to have elaborated a single and comprehensive National Open Government Policy.

2. The **National Development Plan 2014-18 "*Alberto Cañas Escalante*"**, which highlights the government's commitments to make open government one of the three pillars of its national socio-economic development. This choice bears great importance for the streamlining of the principles of open government within all national policies and is a testimony to the administration's commitment to deeply change how the machinery of government works and its relations with its constituency. The NDP further includes several constitutive elements of this new culture of

inclusive policy-making, such as national dialogues and the promotion of gender equality in public life.

3. Costa Rica's **second Open Government Partnership Action Plan** (2015-17), which signals the continued commitment of the country to draft and implement open government policies and initiatives in collaboration with its citizens and civil society organisations, and to expose these initiatives to international scrutiny.

For the country to focus on the effective implementation of these ambitious documents, the Review recommends that the country:

1. **Continue the ambitious move towards an open state** by implementing the commitments made in the Declaration on the Establishment of an Open State. Over the past year, Costa Rica has taken important steps towards an open state approach. The country's initiative represents a best practice among Latin America and OECD countries and should be further pursued. The successful implementation of the strategic directions contained in the Declaration will depend on how the government links them with the related initiatives already included in the National Open Government Strategy, its second OGP Action Plan and the open government components of the National Development Plan. Stronger co-ordination, monitoring, and evaluation mechanisms will have to be built in order to exploit synergies and avoid overlap or, even worse, conflicting actions. Making the open state a reality hence involves scaling up the existing co-operation between key Centre of Government Ministries such as the Ministry of the Presidency, the Ministry of Planning and Economic Policy (MIDEPLAN) and the Ministry of Finance, all levels of government, as well as leading actors from the Legislature, Judiciary and civil society.

2. **Make the Open Government Strategy the guiding vision of the State and take more concrete actions to implement the National Development Plan**, in order to achieve concrete results for the Costa Rican people. The National Open Government Strategy is a first attempt by the government to operationalise the open government pillars of its NDP, which should be further pursued. The government should further ensure that the National Open Government Strategy is fully linked to the implementation of the open government component of the National Development Plan.

The legal and institutional enabling environment for open government in Costa Rica: Towards an open state

Robust institutional and legal frameworks are at the heart of a successful implementation of open government policies and initiatives. They provide the basis for inter-institutional co-operation and the effective transformation of national policy objectives into good practices. In terms of its legal framework for open government, Costa Rica has made important progress over the past years. Like in many OECD countries and in other Latin American countries, in Costa Rica the principles of an open, participatory and transparent government are enshrined at the highest legal level. The Costa Rican Constitution from 1949 includes a wide range of articles that lay the constitutional groundwork for an open state. The country has also recently introduced legislation on digital government, anti-corruption and transparency, and the Municipal Code sets out the legal basis for open government at the local level.

For the time being, only a limited number of OECD countries are involving the Judiciary and the Legislature in their open government processes. Costa Rica is a pioneer in this area. Costa Rica's Judiciary was involved in the elaboration of the second OGP Action Plan and is elaborating its own "Open Judiciary" policies. The same applies to the Legislative Assembly, which is working on an "Open Legislature" initiative.

In order to further improve the legal and institutional enabling environment for the open state, the Review recommends that the country:

1. **Pass an Access to Information Law, ensuring that it is applicable to the whole public sector, including the institutionally decentralised sector** (e.g. semiautonomous and autonomous bodies). The right to access government information is a necessary legal foundation for transparency, accountability and citizen participation in policy making (OECD, 2014). It is the cornerstone of an open and inclusive government. Access to public information is a crucial element to increase accountability, contribute to the efforts to reduce corruption and deepen mutual trust among citizens and their governments. Furthermore, access to public information allows citizens to better understand the role of government and the decisions made on their behalf; to hold governments accountable for their decisions and policies; and to choose their representatives more effectively. Costa Rica does not currently have an Access to Information Law, and the draft version from 2014 assessed in the Review, while is generally in line with

OECD practices, only applies to those institutions that depend on the central government.

2. **Draft a law on citizen participation to enhance the quantity and quality of engagement opportunities provided**. The various constitutional provisions foreseen in this area do not seem to be sufficient to establish an effective degree of participation of all relevant stakeholders in the policy cycle. Formal opportunities defined by the Constitution and by law, such as referenda and the popular initiative, appear not to have achieved their intended effect, and they appear to be often underutilised. Despite these challenges, Costa Rica has managed to create various informal mechanisms to ensure citizen involvement in public affairs, such as ad hoc or permanent mechanisms that, although they are not necessarily institutionalised, have been used extensively by citizens to influence the decision-making processes, not only at the national but at the local level. By unifying all formal and informal participation mechanisms under a sole legal instrument, as done for example by the Government of Colombia, Costa Rica would increase their use and maximise their impact.

3. **Consider creating a national network of civil society organisations focused on open government** in order to increase the number of stakeholders participating in the Open Government National Commission and, therefore, improve its inclusiveness and representativeness. The network could also play a key role in promoting open government principles and practices at the local level.

4. **Consider creating an Open State Commission** with the representatives of the four powers with the aim of promoting the implementation of an open state through concrete actions. Due to the key role played by the office of the Ombudsman, Costa Rica could consider its inclusion in the Commission.

Open government leadership and co-ordination from the Centre of Government in Costa Rica

The OECD defines the Centre of Government (CoG) as the institutions that provide direct support and advice to the head of government and the Council of Ministers. In general, the CoG has three core roles: 1) supporting quality decision making by the head of government; 2) policy co-ordination across government; and 3) monitoring of the implementation of government policy. The three main CoG institutions involved in the open government

policy cycle in Costa Rica are the Ministry of the Presidency, the Ministry of Planning and Economic Policy and the Ministry of Finance. The current administration transferred the responsibility for the country's open government agenda to the Deputy Ministry for Political Affairs and Citizen Dialogue of the Ministry of the Presidency, located in the CoG.

The Deputy Ministry for Political Affairs and Citizen Dialogue (DMCD) took on the responsibility for open government under the current administration, while previously the open government agenda was led by the Digital Government Technical Secretariat, located within the Costa Rican Electricity Institute. This move ensured that the national open government agenda became a responsibility of the CoG, as it is in most OECD countries, and strengthened its links with the country's highest political leadership, including the President and Cabinet.

The role of the Deputy Ministry is strongly linked with that of the National Open Government Commission (CNGA), which was created in 2015 and has as its mandate to co-ordinate and monitor the implementation of the country's open government agenda. The CNGA, Costa Rica's Open Government Steering Committee, is in an ideal position to ensure the broadest possible consensus among stakeholders and to foster policy coherence across the entire public sector and with external actors (i.e. CSOs, private sector, the media, and academia).

The participatory process that brought about the design of Costa Rica's second OGP Action Plan was led by the CNGA and co-ordinated by the DMCD. The plan includes 17 ambitious commitments, which place a much greater emphasis on transparency, access to information and citizen participation than was the case in the first plan, which mostly focused on digital government reforms. In most countries, the OGP Action Plan is the only national document that attempts to integrate all (or at least the most relevant) open government initiatives. However, while OGP Action Plans have great potential to provide a country with a tool to push for certain high-impact initiatives over a limited time frame, due to their two-year policy cycles and to the practical nature of open government commitments under the OGP, they face constraints when it comes to providing a country with a high level and long-term strategic open government vision, one that is fully integrated with and supports the rest of the government priorities.

Thanks to the work of its National Open Government Commission Costa Rica became one of the first countries in the world to successfully elaborate a single and comprehensive National Open Government Policy. This document is expected to make major contributions to the county's medium- to long-term strategic planning, and has significant potential to

successfully guide the elaboration of open government and open state reforms over the next two to five years.

Accordingly, in order to ensure the success of its National Open Government Strategy, Costa Rica should consider the following steps:

1. **Support the co-ordination and outreach functions of the office of the Deputy Ministry for Citizen Dialogue and Political Affairs of the Ministry of the Presidency of the Republic** by allocating it more human and financial resources that would allow it to intensify and extend its already successful efforts to promote the national open government agenda.

2. **Enhance the inclusiveness of the National Open Government Commission** by including representatives from the Digital Government Technical Secretariat, local governments and more civil society organisations.

3. **Institutionalise the inter-institutional contact points (*Enlaces Inter-Institucionales*)** in order to strengthen their capacities to play an effective role in the promotion and co-ordination of open government policies in their respective institutions. The inter-institutional contact points are made up of the Deputy Ministry of the Presidency's counterparts at the different central government ministries, within decentralised institutions, at the office of the Ombudsman, in the Judiciary etc. They provide the operational basis for effective co-ordination and co-operation in carrying out open state policies. While the contact points do not formally report to the Deputy Ministry of the Presidency, they voluntarily collaborate with it and have the potential to provide the CoG with an effective tool for both horizontal and vertical co-ordination.

4. **Create contact points at all levels of the administration, including in municipalities and in the decentralised sector** to increase the reach of open government policies and gather more input to help in monitoring and evaluating the impacts of these policies. Civil society could also identify its own open government champions, who could then be included in the group of contact points. The *Enlaces* could meet regularly in the context of the CNGA and its sub-commissions, or they could have a dedicated sub-commission to exchange ideas on common challenges and share good practices.

5. **Create a monitoring and evaluation (M&E) system for the National Open Government Strategy and the OGP Action Plan, linked to the established procedures of MIDEPLAN that monitor and evaluate the open government components of the**

NDP. M&E is an essential feature of the open government policy cycle as it can ensure accountability and continuous improvements of the policy process through feedback loops. However, like most OECD countries, Costa Rica has not yet created a monitoring and evaluation system for its OGP Action Plans or for the newly created National Open Government Strategy. As of now, the Independent Reporting Mechanism of the OGP performs this function. In the framework of the CNGA, the Ministry of Planning and Economic Policy, has started co-operating with the Office of the Deputy Minister to elaborate an adequate monitoring and evaluation mechanism for the country's OG efforts. This effort should be pursued, and Colombia's system SINERGIA could serve as an example.

6. **Reinforce the communication activities related to the national open government agenda and its achievements** in order to more widely share the principles and practices of open government, both within and outside government, to show their impact and to raise awareness and counter misconceptions of what open government is about.

A focus on citizen participation in Costa Rica: From information and consultation to active involvement

A greater role for citizens in shaping and implementing government policies is a key pillar of open government and one of the objectives of Costa Rica's National Development Plan. Participatory policy making and service delivery can improve the quality of government actions, better tailor state goals to citizens' needs, and increase people's trust in public institutions.

Costa Rica's levels of citizen participation are relatively low. In fact, Costa Rica has the lowest percentage of citizen participation in civil society organisations in Latin America, with only 41% of the population taking part in organisations such as parents' associations, village committees, professional associations, sports groups and political parties or movements. The current administration is aware of this challenge and has made increasing citizen participation a key priority.

Regarding the participation of different groups of the population, the Costa Rican Government has shown its political commitment to involve citizens and particular groups, including the indigenous communities, in all stages of the policy cycle. Specifically, the government, under the co-ordination and leadership of the Deputy Minister for Political Affairs and Citizen Dialogue, has put in place a strategy to increase the dialogue

between the government and the indigenous communities. Its purpose is to guarantee indigenous communities' human rights and to better provide services in their territories.

Costa Rica's second OGP Action Plan also identifies the active participation of citizens as a cornerstone in the search for efficiency and effectiveness of public management. More specifically, the Plan contains five commitments that directly concern citizen participation: a) training and dissemination processes of citizen rights within the framework of open government; b) citizen service education and training processes for public employees; c) protocols for dialogue with sectors and populations; d) dissemination of a citizen participation policy in the judicial power; and e) tools and mechanisms for promoting citizen participation.

In order to systematise the current good practices in these areas, increase their implementation at all levels of governments and improve their impact, the government should consider the following steps:

1. Expand upon the existing efforts to **promote a culture of civic engagement and participation in public matters** through communication strategies, consciousness raising and capacity building activities, aimed at both public officials and citizens, in order to counter the low participation rate that prevails in the country.

2. **Develop a specific overarching policy document on citizen participation in policy making,** including specific tools to involve citizens and civil society organisations in all phases of the policy cycle. This would also be instrumental in supporting the implementation of a new law on citizen participation.

3. **Invest in the capacities of all relevant public institutions to implement and evaluate citizen engagement initiatives** and encourage them to systematically report on the outcomes of these evaluations. This would give greater visibility to the impact of engagement and consultation initiatives, which would encourage more and more citizens to take part in them.

4. Increase and streamline the recent efforts of the Costa Rican Government to **actively engage indigenous communities** in the design and implementation of the public policies that directly impact their lives.

5. Become one of the first countries in the region, and worldwide, to systematically **include the private sector** in the design, implementation and evaluation of its open government agenda and in the next OGP Action Plan.

Open government at the local level in Costa Rica

Subnational governments are closest to citizens and, while the range of services they deliver varies, they are typically the political and institutional place where people and policy meet. Achieving an open state is possible only via active involvement of governments at all levels. This requires the provision of specific set of skills, adequate human and financial resources, and often a complete re-thinking of the interaction between governments and citizens. Increasingly, countries are recognising that subnational governments can play a key role in the design and implementation of open government policies and initiatives.

In Costa Rica, municipalities are the only subnational governments with administrative powers, but compared with the OECD average, subnational expenditure is low in all domains, and municipalities play a relatively marginal role in delivering policies and services to their communities. Services are largely provided by the decentralised institutions of the executive branch.

Municipalities' competences include managing and providing certain municipal public services (such as waste management) and setting and collecting municipal fees and taxes. They also have the authority to define the urban regulatory plan and establish all guidelines pertaining to spatial planning. Despite municipalities' rather limited competences, pockets of excellence in different areas of open government exist. For instance, some municipalities have set up their own digital platforms and open data portals, while others have created new institutional mechanisms for participation, and many are now working on citizen budgets.

The National Directorate for Community Development (DINADECO) is a decentralised institution that plays a key role in open government at the local level. It co-ordinates, promotes and guides the process of creating Community Development Associations. These Associations encourage the co-operation and the active and voluntary participation of the population in economic, social and cultural development at the local level, and they have become important fora that promote citizen participation in local decision making and service delivery. The *Tejiendo Desarrollo* programme is a good example of how citizens can be involved in all stages of the policy cycle at the subnational level. The main component of the programme is the design of a National Policy for Regional and Territorial Development with the participation of citizens. Moreover, after a low level of participation in the design and implementation of the country's first OGP Action Plan, citizens in selected municipalities were more actively involved in the process of designing the second OGP Action Plan. Various workshops were held at the

local level, and one of the plan's commitments mentions municipalities as actors involved in its implementation.

To further materialise the potential of involving the local level in the process of the establishment of an open state, the following actions should be undertaken:

1. **Include the subnational level in the National Open Government Policy to establish a common implementation framework**. A more comprehensive open government agenda at the local level would help municipalities both extend and deepen the impact of their initiatives and would better link them to broader development objectives.

2. **Facilitate the provision of training opportunities for local authorities in order for municipalities to develop their own local open government policies**, aligned with that of the central government both in terms of methodology and content.

3. **Lay the foundation for greater impact of good practices through monitoring and evaluation of the impact of existing initiatives**. MIDEPLAN could play a key role in promoting a culture of evaluation in the country at all levels of government.

4. **Spread existing good practices from certain municipalities** (such as the open data initiative in the Municipality of Palmares) to other areas of the administration and across the country.

5. **Create a network of open municipalities dedicated to the spreading of existing good practices**.

6. **Use the current multi-level governance arrangements more effectively to promote open government at the local level** and improve the co-ordination both amongst different decentralised institutions and between them and local governments through the Cantonal Councils for Institutional Co-ordination.

7. **Consider including more municipalities in the OGP Action Plan cycles** and give municipalities the opportunity to elaborate concrete commitments to promote open local government in Costa Rica's third OGP Action Plan.

8. **Consider giving rotating seats in the CNGA and its sub-commissions to municipalities**. The involvement of municipalities in the commission and its sub-commissions could generate concrete value for the private sector and local citizens in terms of transparency, accountability and a better provision of local services.

Chapter 1

The context and drivers of an open state in Costa Rica

A country's cultural, historical, political and socio-economic context never fails to have a profound impact on its open government policy cycle. In socio-economic rankings, Costa Rica performs comparatively well, but some negative socio-economic indicators have begun to exert a direct impact on people's lives and to erode Costa Ricans' confidence in their government. It is in this context that the current government has started an ambitious move towards increased openness. This chapter introduces Costa Rica's Strategic Vision for an Open State, consisting of the open government pillar of the county's National Development Plan, the Declaration for the Establishment of an Open State and the National Open Government Strategy. The chapter recommends continuing the ambitious move towards an open state by implementing the commitments made in the Declaration on the Establishment of an Open State.

Note: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Introduction

Governments today face complex challenges including rising inequalities, slow economic recovery and declining levels of trust in government. It is in this context that open government policies have gained great importance worldwide. Countries are increasingly recognising that building transparent and participatory governments can make public services more efficient and effective, which can ultimately be a lever for socio-economic development and trust in government. Governments worldwide are experimenting with open government policies to develop innovative approaches to complex multi-dimensional policy challenges.

Policies to make the state more open are not an end in and of themselves, but rather a means to achieving a living democratic society that can meet the needs of its citizens. The OECD, which defines open government as "(t)he transparency of government actions, the accessibility of government services and information, and the responsiveness of governments to new ideas, demands and needs" (OECD, 2005), has been at the forefront of international efforts to promote and disseminate open government policies and practices for more than ten years (OECD, 2015b).

Costa Rica has made great progress in defining and implementing its open government agenda. Costa Rica in 2012 became one of the first countries to join the Open Government Partnership (OGP). The OGP was formally launched in September 2011, and now brings together more than 60 states that have committed themselves to the principles of transparency, integrity, accountability, citizen participation and improved public services. The election of President Solís Rivera and his party *Partido Acción Ciudana* in 2014 with a record approval rating provided an important impetus to the country's open government movement.

The electoral campaign of Solís Rivera was built around open government and citizen participation in order to respond to the growing discontent of citizens with democracy and the state (Government of Costa Rica, n.d.). The Solís administration made open government one of the key guiding principles of its government agenda and defined it as the third pillar of its National Development Plan 2015-18 (MIDEPLAN, 2014). In his presidential message, President Solís Rivera formulated the administration's understanding of an open and transparent government, which "identifies and contemplates how to respond to the needs of the citizens in a timely manner, provides up to date data and precise information, improves the quality and standards of living of the population and contributes to the design of a competitive state" (Government of Costa Rica, 2014).

In line with the focus on open government, the country introduced an ambitious second OGP Action Plan for the period of 2015-17 and in December 2015 became one of the first countries worldwide to issue a National Strategy for Open Government. In November 2015, Costa Rica started to move from an open government towards an open state. On 25 November 2015, the President of the Republic and the Presidents of the Legislative Assembly, the Supreme Court and of the Supreme Electoral Tribunal signed a Declaration for the Establishment of an Open State (*Declaración por la Construcción de un Estado Abierto*) (ibid.).

In order to enhance the implementation of its open government policies and accompany the move towards an open state, Costa Rica has asked the OECD for a thorough assessment of its open government agenda. This OECD Open Government Review is designed to offer the country support in its efforts to build a more open, participatory and accountable government, one that can restore citizens' trust and promote inclusive growth. It provides the government with an in-depth analysis of its open government policies, coupled with actionable recommendations to help to embed the principles and practices of open government in its policy-making cycles and to evaluate their impact.

The *OECD Open Government Review of Costa Rica: Towards an Open State* is intended to assist the country in taking the next step in its move towards an open state. The methodology used reflects the OECD's work in the various areas of open government policies and continues the collaboration between the OECD and the OGP, of which the OECD has been an official multilateral partner since October 2013.

The space for an open state in Costa Rica

A country's cultural, historical, political and socio-economic context never fails to have a profound impact on the design, implementation and evaluation of its open government policies. Factors like participation in elections, political history, and more recently the digital divide have influenced the formation of policies to foster transparency and openness, increase participation and accountability and fight corruption. This section discusses some of the drivers of public sector reforms in Costa Rica and includes information on the political and economic context, as well as on perceptions of the government.

In socio-economic rankings, Costa Rica performs comparatively well. For instance, thanks to decades of high investment by the state in educational programmes, the country had a very high adult literacy rate of 96.3% in 2014 (CIA Factbook, 2016). OECD research shows that well-educated people are often more engaged in the political process and more

likely to ask for access to public information and actively hold their governments accountable (OECD Better Life Index, n.d.).

The United Nations Development Program (UNDP) identified Costa Rica as a country of "high human development" in its Human Development Index (UNDP, 2013). The country's continuous economic growth has also contributed to social mobility and a growing middle-class. The share of the population belonging to the middle class rose from 18% in 1992 to 40% in 2009 (UNDP, 2014). Progress on these indicators since the 1980s has been supported by overall positive - though with occasional dips - economic growth and relative monetary stability (OECD, 2015a). While not eradicating poverty, growth has contributed to an important increase in GDP per capita since the mid-1990s (OECD, 2016). However, the OECD Economic Survey of Costa Rica (2016) also notes that Costa Rica's relative poverty rate has remained largely unchanged for the past 20 years and still affected 22.1% of the country's households in 2015. Extreme poverty even increased from 5.8% in 2010 to 7.2% in 2015 (OECD, 2016).

Societies with high levels of employment tend to be politically stable and have higher levels of citizen engagement (OECD, n.d.). In Costa Rica, unemployment increased from 5% in 2000 to 8.5% in 2013 (*Programa Estado de la Nación*, 2014a). According to the International Labour Organisation (2013), the unemployment rate for young people between 15 and 35 years of age remained at a relatively high 12%. In particular, citizens between 15 and 35 years of age, migrants and women had less opportunity to join the labour market (United Nations, 2015). Open government policies can be a tool to tailor policies to the needs of these disadvantaged groups of society by providing them with opportunities to make their voices heard, ultimately resulting in improved inclusion of all groups of society in the workforce.

The challenge Costa Rica faces as regards some of these socio-economic indicators has had an impact on the public's confidence in government. In 2014, according to the Gallup World Poll (2014), only about 40% of the Costa Rica population stated that they had trust in their national government (see Figure 1.1). OECD experience further indicates that a lack of trust in government can partly be explained by perceived low levels of transparency (OECD, 2014, Morocco). According to the 2015 polls of the *Latinobarómetro,* only 7% of Costa Ricans stated that they had the impression that the state was "very transparent", 42% of respondents indicated that it is "not very transparent" and 28% saw no transparency at all (Latinobarómetro, 2016).

Figure 1.1. **Do you have confidence in the National Government (2015)?**
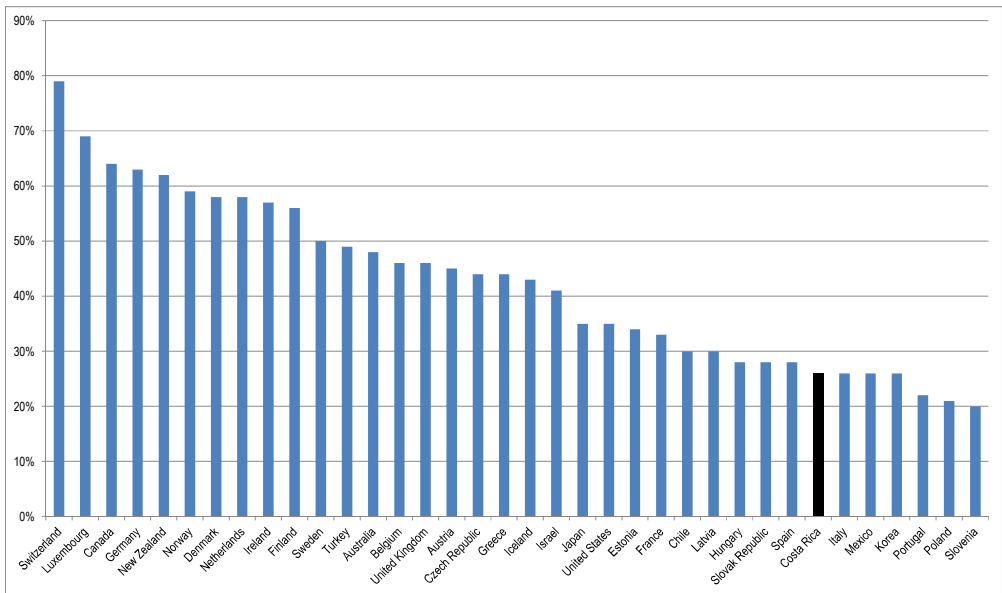
Note: The figure shows percentile rankings among all countries (ranging from 0 [lowest] to 100 [highest] ranks). Countries are arranged from highest to lowest.

Source: Gallup World Poll 2015.

The current administration seems to be aware of this challenge and has stressed its intention to increase citizen participation and foster transparency in order to address socio-economic challenges and earn greater trust in the institutions of the state. The electoral promise of Mr Solís Rivera and his Citizens' Action Party (*Partido Acción Ciudadana*, PAC) to increase citizen participation and transparency resonated well with the Costa Rican people in the Presidential elections of 2014. The people voted for a party that had never been in government and gave it a record approval rating of 50.8% (ibid.). Traditionally, the Social Cristian Union Party *(Partido Unidad Social Cristiana*, PUSC) and the *Partido Liberación Nacional* (PLN) had accounted for up to 90% of valid votes cas in presidential elections. While the high level of approval gave the President a strong mandate to implement open government initiatives, the legislative elections of 2014 also resulted in the creation of an unstable majority in Parliament, which now faces difficulties in pursuing important legislative initiatives such as the law on access to information (see Chapter 2).

Costa Rica's electoral turnout has been very high over the past Presidential elections and equals the OECD average for the most recent elections of which data was available (see Table 1.1) (OECD Better life index, n.d.). High voter turnout is desirable in a democracy because it increases the chance that the political system reflects the will of a large number of individuals, and that the government enjoys a high degree of legitimacy (OECD, n.d.). But Costa Ricans are no longer satisfied with just casting their vote once every four years: an increasingly well-educated, informed and active Costa Rican civil society is demanding greater participation in different political processes. This will to actively contribute to the policy process is also supported by expanding access to the internet and the widespread use of mobile phones.

Table 1.1. **Participation rates in national presidential elections in Costa Rica, 1986-2014**

Year	1986	1990	1994	1998	2002	2006	2010	2014
Participation	82%	82%	81%	70%	69%	65%	69%	68%
Abstentions	18%	18%	19%	30%	31%	35%	31%	32%

Source: *Tribunal Supremo de Elecciones de Costa Rica* (2014), *Elecciones Nacionales Febrero 2014*, San José, www.tse.go.cr/AplicacionVisualizador/datos.aspx.

The World Economic Forum's Global Information Technology Report ranks Costa Rica 53rd worldwide. Alongside Panama (46th), the country leads in the implementation of information technologies in Central America. According to the latest statistics (2014) from the International Telecommunications Union (ITU), already 49% of Costa Ricans use the internet (ITU, n.d.) and Costa Rica's mobile-cellular telephone subscriptions per 100 habitants have risen significantly since 2009. In a country of nearly five million inhabitants, there are about 7.1 million mobile-cellular subscriptions (see Figure 1.2) (ibid.). These statistics are particularly relevant for the topics under discussion in this review as the success of some of Costa Rica's open government initiatives relies on digital technology such as websites and smartphone applications.

The government of Costa Rica is further working on increasing the availability of internet access at home and in public spaces. In October 2015, Costa Rica launched its National Strategy on Universal and Shared Access and Service (*Estrategica Nacional de Acceso y Servicio Universal Solidario,* crdigit@l) in order to "reduce poverty, create jobs and enhance social inclusion". As part of the strategy, the government aims to equip 184 districts, 140 000 households living in (extreme) poverty and community centres with a fast internet connection and enable 240 free-of-charge access points to improve public services. If successfully implemented, the strategy

has the potential to enable a greater share of the population to participate in online tools and participatory websites, thereby supporting the country's open government process.

Figure 1.2. **Costa Rican mobile phones subscriptions on the rise**

Mobile telephone subscriptions

Source: International Telecommunications Union, *World Telecommunication/ICT Indicators Database 2015*; OECD (2016), *OECD Economic Surveys: Costa Rica 2016: Economic Assessment*, OECD Publishing, Paris, http://dx.doi.org/10.1787/eco_surveys-cri-2016-en.

Costa Rica's strategic vision for an open state

In order to address the above-mentioned challenges and to increase citizens' trust in government, the current administration has taken a number of important initiatives to make open government one of the foundations of the state. These initiatives include the inclusion of open government as one of the three pillars of the county's National Development Plan, the signature of the Declaration for the Establishment of an Open State and the adoption of the National Open Government Strategy, all of which will be discussed in this section.

The Declaration for the Establishment of an Open State

On 25 November 2015 the President of the Republic and the Presidents of the other three supreme powers of the Republic of Costa Rica (which are the Legislative Assembly, the Supreme Court and the Supreme Electoral Tribunal) signed a joined declaration committing Costa Rica to move towards an open state. The declaration states that each branch will build a plan of priority actions to "promote a policy of openness, transparency, accountability, participation and innovation in favour of the citizens", which will be included in the institutional strategic plans and will be evaluated annually. The powers also agreed to strengthen and develop the mechanisms of citizen participation in order to contribute to a closer relationship between civil society and the leaders, and to provide access to public information through the use of new technologies.

Costa Rica is the only country in the world to have signed such a sweeping declaration bringing together all the powers of the state. The declaration has significant potential to guide the country's future open state agenda. In order for it not to remain have real world results, the country will now need to reinforce its good will with concrete actions. This includes encouraging the auditing agencies, local governments, decentralised institutions, independent state institutions, the business sector, media, academia and civil society to join forces to build an open state in Costa Rica.

The successful establishment of the open state will also depend on the way the government manages to link the Declaration to existing OG initiatives such as the National Open Government Strategy and its second OGP Action Plan (see Box 1.1 and Chapter 2). Strong accountability mechanisms will have to be built, and funding for initiatives to foster transparency, accountability and citizen participation will have to be ensured. Making the open state a reality hence involves scaling up the existing co-operation between key Centre-of-Government Ministries such as the Ministry of the Presidency, the Ministry of Planning and Economic Policy and the Ministry of Finance, all levels of government, as well as leading actors from the Legislature and Judiciary.

Box 1.1. Declaration: Towards an Open State (Translation)

"Consistent with the idea of building an open state, on 25 November 2015 the President of the Republic, the President of the Legislative Assembly, the President of the Supreme Court and the President of the Electoral Tribunal signed a declaration to promote transparency, fight corruption, increase citizen participation in public affairs and improve access to information for people through innovation in new technologies."

The document recognises that the principles of publicity, transparency, accountability, access to information and citizen participation are fundamental to the rule of law and critical to the daily work of the public branches. It acknowledges that public information should be governed by the principles of openness and proactive disclosure, only subject to a limited regime of exceptions, thereby enabling the people, public opinion and mass media to access and have knowledge of what is discussed and agreed upon. It states that the powers of the State are to promote the implementation of clear, non-discriminatory, open and friendly rules for the processing of requests for information, through the initiatives like "Open Parliament", approved 2 October 2015, Judicial Open Government and "Open government" of early adoption.

Therefore they commit to:

- promoting a policy of openness, transparency, accountability, participation and innovation for all citizens

- building in each branch a plan of priority actions, which will be included in the institutional strategic plans

- instructing the administration to report annually to the President of each branch the assessments and evaluations that demonstrate the fulfilment of the plan.

- promoting various forums for transparency and access to public information

- strengthening and developing mechanisms for citizen participation that contribute to the establishment of a closer relation between civil society and the State, as well as innovating with new technologies to increase citizen access and participation in public matters.

The National Development Plan 2015-18

Costa Rica has included a move toward *an open, transparent and efficient government that fights against corruption* as one of the three pillars of its National Development Plan (NDP) for 2015-18.[1] This inclusion of open government in the country's key policy document carries great potential for the development of the national open government agenda and is testimony to the administration's commitment to open government. The plan

states that "open government is central for this administration. It represents a renewed emphasis on reforming and modernising the state administration, drawn from an innovative relationship between the different actors for generating public value. It is not an end in itself, but an approach to promote transparency, collaboration and participation. Open government constitutes the third pillar of the Solís Rivera administration (MIDEPLAN, 2014)."

The three pillars defined by the current administration have been translated into three overarching national goals/objectives, one of which is *fighting corruption and strengthening a transparent, efficient and effective state*. The government recognises that in order "*to move towards the aspiration to achieve greater well-being and quality of life for all citizens (...) it is required to address the fight against corruption and to strengthen a transparent and efficient State. Realising this goal means promoting a national culture of ethics, transparency and accountability that must go hand in hand with a contribution of the population by means of citizen control. Transparency is related, among other things, to access to public information, which will be facilitated by implementing a model of open government, to allow a closer relationship with Costa Rican citizens*" (Government of Costa Rica, 2014). It is further mentioned that the open government pillar feeds into specific sectoral programmes and is a key element that contributes to all initiatives included in the plan (see also Box 1.2).

Box 1.2. **Open government in Costa Rica's National Development Plan 2015-18 (Translation)**

"The focus on transparency issues, citizen participation and accountability has become relevant in recent years, originating in the rising demands on democracy, both in our country and in the international context. These principles have gained greater meaning and coherence, to the extent that they have recently begun to define the contours of the concept of open government.

Since the concept was redefined in early 2009, it has brought about new approaches on how to improve governance and promote institutional strengthening, giving rise to a context where the role of actors beyond the state has been instrumental, prompting a transition which has allowed the country to move in directions that expand the possibilities of our democratic systems and promote new spaces for an enhanced relationship and virtuous link between civil society, the State and the market.

Box 1.2. **Open government in Costa Rica's National Development Plan 2015-18 (Translation)** *(continued)*

Open government is central to this administration. The idea is framed as a renewed appeal for the reform of the state and the modernisation of the public administration, based on an innovative relationship between different actors to co-create public value. It is not an end in itself, but a means to promote transparency, collaboration and participation. Open government constitutes the third pillar of the Solís Rivera administration.

Transparency, understood in a proactive manner, is recognised in the citizenship rights and powers so that, apart from access to information on state affairs, citizens also have the ability to participate in and form their opinions about public affairs.

Collaboration is defined as the commitment on the part of citizens and of other actors who participate and co-operate with the government to improve public services, and the concept also includes the mainstreaming of the interoperability that must exist both within and between the various agencies and state bodies, which are also players in open government.

Finally, citizen participation emphasizes the central role of citizens in public affairs and in the decision-making processes which affect them, as members of the public work to find and implement solutions in a greater shared responsibility scheme that can take advantage of distributed capabilities and the collective intelligence of social actors.

Today's communication and information technologies allow citizens to be in contact with others around the world almost instantly, and the use of the resources and services made possible by global communication networks facilitates the spread of and access to information and knowledge. Ortiz (1995) notes that the greater the amount of information generated by a society, the greater the need to convert it into knowledge.

In a world characterized by the phenomenon known as the information explosion, timely and accurate access to and possession of data are vital elements to the development of changing means of decision making.

It is recognised that information has an impact on the social, economic, environmental and political development of a country, as it constitutes a resource of great economic value. However, the organisation, standardisation, dissemination and spread of information have all been found wanting overall and lacking in coherence, preventing the State from improving its decision making. In addition, these failures constitute a violation of the right of citizens to be informed, thus limiting their participation and therefore the possibility of feedback between government and society. Moreover, it is necessary to address and rectify the lack of initiatives, decisions and government actions for a thorough implementation of the Information and Knowledge Society.

In addition to this, it is essential to consider other elements or factors that influence information flows, both in the public and private sectors and civil society.

Box 1.2. **Open government in Costa Rica's National Development Plan 2015-18 (Translation)** *(continued)*

The State recognises the importance of strengthening its information infrastructures, and therefore it intends to develop a strategy to encourage and manage development resources, services and information systems content, consistent with the information and communication technologies, aimed at ensuring access to universal information to achieve national development goals. In all this, a focus on national, regional, sectoral, local and international integration should be maintained.

This is how we will achieve better conditions for effective decision making, contribute to the process of accountability, transparency and reduce the digital divide, all in order to establish a permanent dialogue between the government and citizens and encourage their participation.

Suggestions for changes could also come from society itself, thanks to the feedback from citizens, which will allow them to exercise their right to be informed about public affairs and, therefore, act through the expression of public opinion, to make their views heard on government decisions in various areas such as environmental and social policy, among other topics, with citizens moving from a role as passive actors to that of watchdogs of public governance. The government seeks to strengthen the idea of new "electronic governance", which enables electronic interaction between government and civil society actors (institutions, individuals and companies) in order to broaden and deepen the areas of democracy, participation and promote transparency and improve the processes of governance. These processes serve to democratise and encourage the exercise of the right to information, with agency departments responsible for information and professionals in this area taking on an important role in a context that brings with it new challenges and new opportunities.

Given the shortcomings in relation to the quality and timeliness of the data recorded by the different institutions, there is a plan to increase information gathering capacity through the establishment of efficient information sector units that allow agencies to collect, store, process and analyse data. Similarly, it is expected to generate improvement of all the sectors that make up the Solis Rivera Administration, as well as the links between integration and exchange of information.

All this is aimed at making it possible to use strategic, timely, reliable and accurate information on different topics in the design of strategies and policies at the local, regional, sectoral and national levels. The plan's functions relate to the generation, integration and dissemination of statistical and geographical information, which will generate a variety of products and services. In this task, documentation centres could redefine their roles, moving towards greater co-ordination with and receiving guidance from the Centre for Information and Planning (*Centro de Información para la Planificación*) as set out in Executive Decree 37735-May 2013."

Source: Government of Costa Rica (2014), *Plan Nacional de Desarrolo 2015-2018*, faolex.fao.org/docs/pdf/cos145028.pdf.

Hence, OG is a key transversal axis of public management and of the development agenda of Costa Rica. The expressed aim of this administration is to make open government the basis for conducting politics and administering the state (see Box 1.3 for an example of how this is being done in Peru). In order to make this aim a reality, open government has to become the guiding vision of the state in order to achieve concrete results for its people. The government has begun this operationalisation of the open government pillars of its NDP through the design of the National Open Government Strategy (see below).

Box 1.3. **Peru's Policy of Modernisation of Public Management**

Other countries in the region have employed similar approaches to incorporate open government principles in their modernisation and development plans. For instance, in Peru, the Policy of Modernisation of Public Management (*Política de Modernización de la Gestión Pública*) entails a focus on open government policies that represents one of the three transversal axes, which cut across the five main pillars of the reform.

Source: OECD (forthcoming), *Peru: Implementing Integrated Governance for Inclusive Growth*, OECD Public Governance Reviews, OECD Publishing, Paris.

The National Open Government Strategy: Defining a National Open Government Policy

Costa Rica was also one of the first countries in the world to establish a National Open Government Policy. On 7 December 2015, a public event with the President of the Republic was organised by the National Open Government Commission to present the National Strategy for Open Government (*Estrategia Nacional de Gobierno Abierto*). The Strategy represents a good practice at the international level and could provide an example for other countries to follow. It creates a long-term whole-of-society open government vision for the country that has significant potential to guide the elaboration of open government policies in the coming years and help the country in its move towards an open state.

The stated aim of the strategy is to achieve the goal of "an open, transparent and efficient government to fight against corruption", as stated is in the National Development Plan 2014–18. By operationalising the open government pillar of the National Development Plan, the Strategy also connects the country's OGP Action Plan (for a discussion of the plan, see

Chapter 3) and the National Development Plan 2014-18. It elaborates on the aims of the country's open government efforts and shows that the government recognises the value of open government for the achievement of wider national policy objectives and medium- and long-term development.

The Strategy was declared "of public interest" by means of decree 39372-MP-MC, a testimony to the importance given to the national open government agenda by the current administration. Costa Rica has to be praised for its attempt to establish a national open government vision that goes beyond the OGP action plan. The most important challenge for the country now is to ensure that the policy is fully linked to the implementation of the open government component of the NDP and the monitoring and evaluation responsibilities of MIDEPLAN (see also Chapter 3).

The OECD approach to open government and how this Review supports Costa Rica in its effort to become an open state

The OECD has been at the forefront of international efforts to promote and disseminate public sector reforms inspired by the principles of open government for more than 15 years. In close co-operation with its member and partner countries, the OECD provides a forum for the exchange of best practices to effectively implement open government reforms worldwide. This OECD Open Government Review (OGR) builds on the experience gained in other OGRs, including those for Lithuania, Morocco, Myanmar, Tunisia and Indonesia.

Defining open government

A government is open when it is transparent, accountable, engaging and operates with integrity, which – through specific policy instruments and practices driving change and innovation processes – is likely to lead to better services and policies, higher trust in government, social well-being and greater quality of democracy (OECD, 2016). As mentioned above, the OECD defines open government as "the transparency of government actions, the accessibility of government services and information, and the responsiveness of governments to new ideas, demands and needs" (OECD, 2005).

In its responses to the OECD Survey, Costa Rica complemented this definition: "Open government is key for this administration. It is postulated as a renewed appeal for the reform of the state and the modernisation of the public administration based on an innovative relationship between different actors to co-create public value. Open government is not an end in itself, but a means to promote transparency, collaboration and participation. Open

government is the third pillar of the Solís Rivera administration. Transparency is here understood in a proactive way – meaning to recognise rights and powers of citizens so that they can, based on their access to public information, participate and form opinions about public affairs. Collaboration is defined as the commitment of citizens and other actors to participate and work together with the government to improve public services, as well as mainstreaming the interoperability that must exist both within and between the various agencies and state bodies. Finally, citizen participation emphasises the role of citizens in public affairs and in making decisions that affect them". This elaborated definition provides the backdrop for the current government's OG efforts and gives a basis for the implementation of an ambitious open government agenda.

The OECD Open Government Project

OECD work on open government consists of several components, including Reviews, data collection and surveys (see Box 1.4) and networks to foster policy dialogue. In 2013/2014, the OECD produced the first regional stocktaking exercise on open government policies and practices in 11 countries from Latin America and the Caribbean (LAC). The OECD Report on Open Government in Latin America, which focused on the topics of open government strategies, access to information and open data, also included case studies of Costa Rica, Peru and Colombia. This Open Government Review of Costa Rica takes this case study's recommendations into consideration and makes reference to it when appropriate.

Box 1.4. **OECD Surveys on Open Government**

The first Survey on Open Government focused on 11 Latin American countries that are OGP members. The OECD Public Governance Review: Open Government in Latin America offers a comparative analysis of these countries in three open government areas: open government strategies, access to information and open data.

In 2015, at the meeting of the Public Governance Committee, the OECD launched the Survey on Open Government and Citizens' Participation in the Policy Cycle to collect better data and information on the design, implementation and impact of open government policies and the involvement of citizens and civil society in the policy cycle. The Survey will contribute to a better understanding of common challenges and trends in order to reinforce the transparency and accountability of the public sector. Costa Rica has already participated in this survey.

Source: OECD (2014), *Open Government in Latin America*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264223639-en.

Furthermore, the OECD is currently working on a Report on Open Government based on the 2015 Survey on Open Government and Citizen Participation in the Policy Cycle (the "OECD Survey"), to which Costa Rica has contributed. This Review will make reference to the preliminary findings of the OECD Survey in order to benchmark Costa Rica's practices against practices from the OECD and other Latin American countries.

In order to facilitate policy dialogue and the sharing of good practices, the OECD has established Networks on Open and Innovative Government across the world. These Networks, which have similar working mechanisms as official OECD Committees, are platforms to provide countries from different regions with the opportunity to engage in knowledge transfer and exchange of good practices with OECD countries at the nexus of the areas of good governance, open government, public sector innovation, and digital governance. The OECD Network on Open and Innovative Government in the Middle East and North Africa (MENA) has been working successfully for more than ten years. In 2015, the first two meetings of the Network on Open and Innovative Government in South-East Asia took place.

Responding to a demand of the region as expressed by countries during the Regional Seminar on Open Government held in Bogota, Colombia in March 2014 (see Box 1.5), and resulting from the OECD Report on Open Government in Latin America (OECD, 2014), the OECD Network on Open and Innovative Government in Latin America and the Caribbean (LAC) was officially launched at the Global Summit of the Open Government Partnership held in Mexico City in October 2015. The Network is a platform to provide the LAC region with the opportunity to engage in policy dialogue, knowledge transfer, and exchange of good practices with OECD countries in the areas of good governance, open government, public sector innovation, digital governance and open data, and citizen participation.

Box 1.5. Regional Seminar on Open Government in Latin America

The Regional Seminar on Open Government held in Bogota (Colombia) in March 2014 brought together the open government focal points from Brazil, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Finland, Guatemala, Mexico, Paraguay, Peru, United Kingdom, and Uruguay as well as different CSO's and multilateral organisations to discuss achievements and challenges facing open government in the region and to place the practices and institutions of Latin America in a global perspective. The intense regional dialogue on open government resulted in the identification of common challenges that will inspire regional action in the coming years.

Source: Author's own work.

Together with Mexico, Costa Rica shares the co-presidency of the Network. As leading regional players, Mexico and Costa Rica have demonstrated a strong interest in disseminating open government principles and practices nationally and across the world. The Network (see Box 1.6) brings together open government representatives from governments, civil society and the private sector. In regular meetings, the participants will discuss regional and national trends, compare challenges and identify common solutions (see Box 1.7).

Box 1.6. **OECD Network on Open and Innovative Government in Latin America and the Caribbean**

The Network seeks to deliver the following:

- connect reformers around the region from government (central and local), civil society, business associations, and other relevant multilateral institutions to exchange ideas, experiences, and knowledge on how to build better and stronger public institutions

- identify good practices of open and innovative governments and create a space conducive to their dissemination, through data collection and analyses, policy assessments, and peer review processes

- provide examples and recommendations to its members on how to sequence open government reforms within the regional and country-specific context and support their implementation to promote socio-economic development and regional integration.

Box 1.7. **Activities of the Network on Open and Innovative Government in Latin America and the Caribbean**

Policy dialogue and assistance to implementation

The OECD, through the activities of the Network on Open Government in Latin America, will assist LAC and other relevant countries in the design and implementation of public sector reforms in the areas of open government by:

- disseminating principles, instruments and standards from OECD members, the OECD Secretariat, and other relevant countries/ organisations

- promoting policy dialogue by establishing a permanent forum in which participants will be able to discuss regional and national trends, compare challenges and identify common solutions

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Box 1.7. **Activities of the Network on Open and Innovative Government in Latin America and the Caribbean** *(continued)*

- facilitating knowledge sharing based on the dissemination of good practices and success stories, as well as common mistakes to be avoided;

- offering tailored policy recommendations and advice based on the renowned OECD Peer Review methodology

- providing technical assistance and capacity building seminars to improve governance and quality of public institutions in the region.

Supporting national and regional policy priorities

- Each meeting will have a specific focus on one or more issues selected because of their national and/or regional relevance.

Collecting data and producing analyses for better decision making

- In order to ground national and regional policies and OECD technical assistance on real and up to date information, the OECD will systematically collect a fixed set of data and will produce a coherent series of indicators that will provide actionable analyses on governance evolution and trends in Latin American countries. This regular collection of data and analyses will build on the methodology of the OECD flagship publication Government at a Glance and will focus on jointly selected categories.

Source: Author's own work.

The OECD Open Government Reviews and the experience of OECD countries show that the implementation of open government policies yields a great variety of benefits, (see Box 1.8) not only to the government, but also to businesses, academia and civil society (OECD, 2010). Findings from OECD Reviews and Surveys indicate that fostering government transparency and engaging citizens, civil society organisations and the private sector in the elaboration of policies can help in the search for innovative policy solutions – for instance via the use of ICT-based mobile applications that can enhance the accountability of institutions and ultimately strengthen the public sector's capacity to improve the well-being of the population. Openness, accountability and citizen participation in decision-making can also ensure that the needs, preferences and concerns of stakeholders, including underserved populations such as young people, are reflected in policy making (OECD, 2015b). An inclusive public sector in

which all parts of society can participate can, for instance, capitalise on society's diversity to better target services in areas such as environmental policies.

Box 1.8. **Benefits of open government**

Establishing greater trust in government. Trust is an outcome of open government that can reinforce government performance in other aspects. In addition, if citizens trust the government or specific government policies, then they may be more willing to pay (fees, contributions, taxes) to support these policies.

Ensuring better outcomes at less cost. Co-design and delivery of policies, programs and services with citizens, businesses and civil society offer the potential to tap into a broader reservoir of ideas and resources.

Raising compliance levels. Having people participate in the process helps them understand the stakes of reform and can help ensure that the decisions reached are perceived as legitimate.

Ensuring equity of access to public policy making by lowering the threshold for access to policy-making processes for people facing barriers to participation.

Fostering innovation and new economic activity. Public engagement and open government are increasingly recognised as drivers of innovation and value creation in both the private and public sectors.

Enhancing effectiveness by leveraging knowledge and resources of citizens who otherwise face barriers to participation. Public engagement can ensure that policies are better targeted and address the needs of citizens, eliminating potential waste.

Source: OECD (2010), "Background document for session 1 OECD Guiding Principles for Open and Inclusive Policy Making", Expert Meeting on Building an Open and Innovative Government for Better Policies and Service Delivery, OECD, Paris, 8-9 June, www.oecd.org/gov/46560128.pdf.

The recently signed Sustainable Development Goals (SDGs) and the 2030 Agenda for Sustainable Development send a strong signal that public governance and open government have to play a key role in fostering inclusive growth and that, in order to achieve ambitious global development targets, inclusive institutions are indispensable. SDG 16 calls for the development of "effective, accountable and transparent institutions at all levels" (Goal 16.6.) and to "ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements." (Goal 16.10) (UN, 2015). Hence, the international community has recognised the need for good public governance and open government policies and practices, and has expressed a commitment to implementing them. Table 1.2 highlights other open

government principles and how they are mirrored in the Sustainable Development Goals (SDGs).

Table 1.2. **Sustainable Development Goals related to open government**

Goal number	Sustainable Development Goals
10.2	By 2030, empower and promote the social, economic and political inclusion of all, irrespective of age, sex, disability, race, ethnicity, origin, religion or economic or other status.
16	Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels
16.6	Develop effective, accountable and transparent institutions at all levels.
16.7	Ensure responsive, inclusive, participatory and representative decision-making at all levels.
16.10	Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.

Source: UN (2015), *Sustainable Development Goals*, United Nations, https://sustainabledevelopment.un.org/.

Open government and the SDGs should be understood as complementary and mutually reinforcing, as this non-exhaustive list of examples illustrates. The interrelated character of the major policy challenges until 2030 is highlighted by a quote from President Obama's speech to the United Nations General Assembly on the SDGs: "So, in the face of corruption that siphons billions away from schools and hospitals and infrastructures into foreign bank accounts, governments have to embrace transparency and open government and rule of law" (The White House, 2015).

Organisation of the OECD Open Government Review of Costa Rica

This OECD Open Government Review is built on the different elements of the OECD approach to open government. It is split into five chapters. The next chapter analyses the enabling environment for open government policies in Costa Rica. It introduces the country's open state approach and highlights the major elements of the legal, institutional and policy framework for open government in Costa Rica. This framework is contextualised and benchmarked against existing frameworks in OECD member countries as well as in Latin America and the Caribbean.

Chapter 3 discusses open government policy co-ordination and the leadership of the Ministry of the Presidency, the Ministry of Planning and Economic Policy and the Ministry of Finance, which the report identifies as the Costa Rican Centre of Government (CoG). It highlights the importance

of the CoG for the open government policy cycle and identifies key challenges the country has to confront to improve the effective delivery of open government and open state policies.

Chapters 4 and 5 discuss the implementation of open government policies in two different areas. Chapter 4 looks at practices of citizen participation in Costa Rica and presents the key findings of a survey on citizen participation sent to Costa Rican Ministries. Chapter 5 is dedicated to open government at the subnational level and discusses open government in municipalities and districts and analyses the important contribution they can make to the country's open state approach. It introduces existing good practices with regard to citizen participation, open data and participatory budgeting and provides concrete recommendations on how to better involve municipalities in the open government policy cycle.

Recommendations

- **Continue the ambitious move towards an open state** by implementing the commitments made in the Declaration on the Establishment of an Open State. The country's initiative presents a good practice among Latin American and OECD countries and should be further pursued.

- Make the Open Government Strategy the guiding vision of the State and take more concrete actions to implement the National Development Plan, in order to achieve concrete results for the Costa Rican people. The National Open Government Strategy is a first attempt by the government to operationalise the open government pillars of its NDP, and it should be further pursued. The government should further ensure that the National Open Government Strategy is fully linked to the implementation of the open government component of the National Development Plan.

Notes

1.   The two other pillars are: Promote economic growth and employment of quality; Fight poverty and reduce inequalities.

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Chapter 2

The legal and institutional enabling environment for open government in Costa Rica: Towards an open state

Robust institutional and legal frameworks are at the heart of the successful implementation of open government policies and initiatives. This chapter analyses the main legal and institutional underpinnings which constitute the basis for Costa Rica's path towards an open state. The chapter recognises the important progress the country has made through the transfer of responsibility for open government from the Digital Government Technical Secretariat to the Deputy Ministry of the Presidency for Political Affairs and Citizen Dialogue and through the creation of the National Open Government Commission and underlines the solid legal basis for open government at the local level. In order to further strengthen the enabling environment for open government, the chapter recommends passing an Access to Information Law and drafting a Law on Citizen Participation.

Introduction

Over the past two years, the open government movement has gained impressive momentum in Costa Rica. New topics have appeared on Costa Rica's open government agenda, including an increased focus on citizen participation and transparency and have complemented the ambitious digital government agenda initiated by the previous administration. The shift of responsibility for open government from the Digital Government Technical Secretariat to the Deputy Ministry of the Presidency for Citizen Dialogue and Political Affairs and the creation of the National Open Government Commission, along with the elaboration and adoption of an ambitious second Open Government Partnership (OGP) Action Plan are testimony of the current administration's great will to move its OG agenda forward.

As discussed in Chapter 1, Costa Rica - led by the Deputy Ministry for Political Affairs and Citizen Dialogue of the Ministry of the Presidency - became one of the first countries worldwide, to undertake an ambitious process of collaboration encompassing the various branches of the state to elevate open government processes to another level and move towards an open state (OS). The government is increasingly co-operating with the Judiciary, which has also worked on its own policy for citizen participation and is taking part in the second OGP Action Plan. Elsewhere, the Legislative Assembly has taken its own promising Open Legislature initiative.

Having an appropriate enabling framework in place is important in order to transform open government principles into a reality, carry out open government commitments and ultimately deliver on Costa Rica's stated aim of harnessing the benefits of open government to improve peoples' living conditions and make growth more inclusive. This chapter introduces the constitutional framework and the most important laws in areas relevant to open government, including legislation on digital government, anti-corruption and transparency. The chapter further discusses the role of Costa Rica's key open government actors, both from government and civil society, and presents the initiatives taken to foster transparency and citizen participation by the Legislative Assembly and the Judicial Power.

An overview of Costa Rica's legal framework for an open state

In order to be effectively implemented, the open state needs to have a firm basis in the constitution and in the laws and decrees of a country. This section discusses the legal foundations of the open state in Costa Rica and presents the most important laws and decrees in relevant areas.

An ample constitutional basis for an open state

Like in many OECD countries and other Latin American countries, in Costa Rica the principles of an open, participatory and transparent government are enshrined at the highest legal level (OECD, 2014a). The Costa Rican Constitution (see Box 2.1) from 1949 includes a wide range of Articles which build the constitutional basis and lay the groundwork for an open state (OS):

- Citizen Participation is enshrined in Article 9, which was amended by Law 8364 from 2003. According to the constitution, "the Government of the Republic is popular, representative, **participatory**, alternative and responsible (…)".

- The constitution further sets out the foundations for a democratic state by defining the right to privacy (Article 24), the freedom of assembly (Article 25), the right to meet peacefully and without arms (Article 28), the freedom of speech (Article 26), and equality (Article 33) (Government of Costa Rica, 1991).

- Article 11, which was amended by Law 8003 in 2000, denotes administrative transparency and accountability and the liability of former public officials.

- Costa Rica established access to information as a fundamental right in its constitution. The constitution also provides the basis for the disclosure of information. Article 30 states "Free access to administrative departments is guaranteed for the purpose of obtaining information on matters of public interest."

- The constitution further ensures the "freedom of petition, individually or collectively submitted before any public officer or official entity, and the right to a prompt solution" (Article 27).

- Article 46 highlights the right to receive appropriate and truthful information.

- The representation of minorities is set out in Article 95.6.

Box 2.1. **Constitutional Articles building the basis for citizen participation**

- Article 25 of the Constitutions states that "The inhabitants of the Republic have the right of association for lawful purposes. No person may be compelled to form part of any association whatsoever.

- Article 26 establishes that "All persons have the right to assemble peacefully and without arms, whether for private business or to discuss political affairs and examine the public conduct of officials".

- Article 27 stipulates that "The right to petition any public official or State entity, either individually or collectively, and the right to obtain prompt resolution are guaranteed".

- Article 29 mentions that "All persons may express their thoughts verbally or in writing and may publish them without prior censorship".

- Article 93 establishes that "The suffrage is a fundamental and compulsory civic duty" and that "All citizens have the right to organise themselves in parties in order to participate in national politics, provided that such parties are committed in their platforms to respect the constitutional order of the Republic".

- Article 98 says that "Political parties shall express political pluralism, contribute to the formation and manifestation of popular will and shall be fundamental instruments for political participation. Their creation and the exercise of their activities shall be free within a context of respect for the Constitution and the law. Their internal structure and operation shall be democratic"

Source: Republic of Costa Rica (1949), *Constitution*.

Other Latin American countries have also enshrined open government principles in their constitutions. For example, Colombia's constitution from 1991 establishes that "(t)he essential goals of the state are (…) to facilitate the *participation of all* in the decisions that affect them and in the economic, political, administrative and cultural life of the nation (…) (Government of Colombia, 1991). Peru's 1993 Constitution contains provisions on the right of citizens to access and request public information (Article 2), government accountability (Article 31) and transparency (Article 40) (Government of Peru, 1993).

The broad constitutional and legal basis for open government should be complemented with an Access to Public Information Law

The right to access government information is a necessary legal foundation for transparency, accountability and citizens' participation in policy making (OECD, 2014a). It is the cornerstone of an open and inclusive government. Access to public information is a crucial element, one that is necessary to increase accountability, contribute to the efforts to reduce corruption and deepen trust among citizens and their governments (OECD, 2015a).

Furthermore, access to public information allows citizens to better understand the role of government and the decisions made on their behalf; to hold governments accountable for their decisions and policies; and to choose their representatives more effectively. The accessibility of information, for example data on health care, education and other public services, helps to improve not only the public perception of the governments' service delivery, but also prompts a simplification of bureaucratic procedures for the citizens. At the same time, access to information provides governments with more tailored approaches to help them address requests for information by citizens and offer high-quality services.

More than 100 countries, all but one of the OECD member countries (and as of September 2013[1], fifteen countries in the Americas and six in the Caribbean) have a stand-alone access to/freedom of information (ATI) law, or feature the right to access information embedded within other laws, regulations or even, in the case of some countries like Costa Rica, in their Constitutions(see above).

Although it is a first step, enshrining access to public information in the Constitution is by itself not enough. As Laura Neuman points out "in many Latin America countries the right to information is found in their Constitutions, but without implementing legislation or access to the Constitutional Courts, the right has been meaningless" (2004). According to Joseph Stiglitz and Roumeen Islam, "setting a legal framework to ensure not only the freedom of the press, the "right to say", but the concomitant "right to know", through laws protecting freedom of information, is also essential". Freedom of Information (FOI) or Access to Information (ATI) laws are aimed at allowing citizens, and in many countries, also institutions, to have access to information and data held by public entities in order to:

- guarantee maximum transparency and accountability of government operations

- encourage the reuse of information

- generate economic value for private individuals, civil society organisations and companies.

In this sense, Freedom of Information (FOI) or Access to information (ATI) laws constitute a fundamental pillar of open and inclusive government and a recognition of a basic democratic principle: governments represent the people and act on their behalf, and thus their actions must be open to scrutiny (Abramovich and Courtis, 2000). For this to happen, comprehensive regulations need to be passed, then adequate implementation of the rules ensured, taking into account the relevance and "usability" of the information provided vis- à-vis its potential users, and finally the presence of a proper enforcement mechanism of the law guaranteed. Around the world, there have been significant steps forward on regulations on the right to access to information and their implementation. For instance, 65% of countries in the LAC region and 97% of OECD countries have passed ATI laws.

Although every ATI law is different and must respond to the specificities of each country, as a minimum baseline they should all contain the following:

- objectives and principles

- scope

- proactive disclosure

- procedures to request information (how and where to request information, response to the request, denials)

- exemptions

- appeals procedures.

In Costa Rica the drafting of a law on access to information started in July 2012 in the form of an inclusive process involving several stakeholders. As discussed in the OECD Report on Open Government in Latin America (OECD, 2014a), the process began with the establishment of an inter-institutional committee led by the then Vice-President and with representatives of the National Ombudsman Office (the *Defensoría*), the Public Ethics Attorney General's Office (the *Procuraduría de la Ética*), the General Comptroller's Office, the Ministry of Planning and Economic Policy, the Digital Government Technical Secretariat, the Supreme Electoral Court, and the judicial branch. The committee worked on the first drafts and carried out consultation activities and meetings with civil society organisations, academia and the private sector. The preliminary document

was praised by representatives of civil rights organisations, who thought it fulfilled all the requirements necessary for its adoption as a law.

On 19 June 2014, a draft law on Transparency and Access to Public Information (*Ley Transparencia y Acceso a la Información Pública - LTAI*) was presented to the legislative assembly. However, more than one and half years later the law has yet to be passed. According to the Independent Reporting Mechanism (IRM) of the Open Government Partnership, one reason for the deadlock on the law is the Costa Rican Access to Information Institute itself, which under the law would have its own budget (OGP, 2014).

Currently, the Ministry of the Presidency is working on modifying this draft law and aims to present a new draft law to Congress soon. To react to this slow process, the government plans to publish an access to information Decree in order to crystallise the right embedded in the Constitution. However, this decree would only be applicable to the executive branch. As explained below, it is important that any transparency initiative is consistently applied throughout the whole public sector. At the time this report was written, only the draft law on transparency and access to public information published in the official state Gazette was available. The OECD was informed that the National Open Government Commission was working on another draft law which would soon be introduced in the Legislative Assembly. However, this Law could not yet be made available. Therefore, the analysis of key aspects of Access to Information (ATI) is based on the 2014 draft law.

Scope

Although there is a presumption under ATI laws that citizens can have access or request public information from all public institutions, this is not always the case. For example, some laws do not apply to all levels of government, while others do not bind the legislature or state-owned enterprises (SOEs). In OECD countries, Estonia, Finland, Hungary, Italy, Korea, Poland, Slovakia and Sweden extend their law vertically to all levels of government and horizontally to all branches of the central government. As shown in Table 2.1, OECD ATI laws differ in their coverage of the various levels of government. While nearly all governments ensure access to information generated by the central government and the Executive, 25 countries ensure access to information generated by subnational units – such as provinces – and only half provide access to information on the legislative, judicial and other branches. For example, Greece's Administrative Procedural Code grants access to documents "drawn up by public services" which may include all central, regional and local administration, but the law

does not apply to archives, the Executive Branch or the Cabinet of Ministers.

In OECD member countries with federal systems, legislation passed by national legislatures is constitutionally not applicable at the state or provincial level. That said, in most OECD countries, the constitutionally autonomous state/provincial legislatures also have ATI legislation in force. In Canada, ten provincial and three territorial legislatures have all passed such legislation. In some cases, like that of Québec, the provincial/territorial ATI legislation was enacted before the national one.

Table 2.1. **Breadth of freedom of information laws (2010)**

Total OECD countries		
Level of government		
Central	31	Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Russian Federation, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States.
Subnational	25	Austria, Belgium, Canada (provincial/territorial legislation), Chile, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Iceland, Ireland, Israel, Italy, Korea, Netherlands, New Zealand, Norway, Poland, Portugal, Russian Federation, Slovak Republic, Slovenia, Spain, Sweden, Turkey and United Kingdom.
Branches of power at the central level		
Executive	31	Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Russian Federation, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom and United States.
Legislative	16	Belgium, Chile, Estonia, Finland, Hungary, Ireland, Israel, Italy, Korea, Mexico, Poland, Russian Federation, Slovak Republic, Slovenia, Sweden, Turkey, Ukraine and United Kingdom.
Judicial	16	Australia, Belgium, Chile, Estonia, Finland, France, Hungary, Israel, Italy, Korea, Mexico, Norway, Poland, Russian Federation, Slovak Republic, Slovenia, Sweden and Ukraine.
Other bodies		
Private entities managing public funds	18	Australia, Belgium, Czech Republic, Estonia, Finland, France, Hungary, Iceland, Italy, Korea, Netherlands, Poland, Portugal, Slovak Republic, Sweden, Switzerland, Turkey, Ukraine and United Kingdom.

Source: OECD (2011), *Government at a Glance 2011*, OECD Publishing, Paris, http://dx.doi.org/10.1787/gov_glance-2011-en.

According to Costa Rica's draft law, "the provisions of this law are applicable to the whole Public Administration at the national and local level, central and decentralised; the Executive, Legislative and Judicial branches and the Supreme Electoral Tribunal, when they are performing administrative functions; autonomous and semiautonomous institutions, bodies with instrumental legal personality, state-owned commercial companies, non-state public entities, municipalities, public universities and

public company and any other public or private entity that manages public funds" (Article 4). Taking into account the importance and the size of the institutionally decentralised sector (e.g. semiautonomous and autonomous bodies), the draft law rightly provides that it should be applicable to any institution that manages public funds.

Furthermore, in many cases, a concern regarding the disclosure of information held by private companies has been raised, as governments have increasingly contracted out and privatised state assets. In this sense, Costa Rica's draft law is innovative, as Article 5 makes private companies subject to the law when they carry out an activity of public interest, with the passage stating that "the subjects of private law, when they exercise an activity of public interest, administer or manage public funds or exercise any public authority temporarily or permanently, should dispatch, thoroughly and in a timely manner to the Costa Rican Institute for Access to Information (*Instituto Costarricence de Accesso a la Información* - ICAI) and to any citizen who requests it, any information about matters of public interest that relates to such activity". The draft law foresees the creation of the Costa Rican Institute for Access to Information, an established legal entity with budgetary independence.

Proactive disclosure

Proactive disclosure (i.e. information that must be publicly available prior to public request) is instrumental in achieving greater transparency and openness in government. Proactive disclosure ensures that information seekers get immediate access to public information and avoid the costs associated with filing a request or engaging in administrative procedures. For public organisations, proactive disclosure can reduce the burden of complying with ATI requests.

Normally, every ATI law provides the list of information that will be required to be published by each institution. For instance, all OECD countries proactively publish public information, and in 72% of them, proactive disclosure is required by ATI laws for certain categories of information. The type of information proactively disclosed varies across countries. While a majority of countries proactively disclose budget documents (94%), annual Ministry reports (84%), and audit reports (72%), only a smaller number (28%) (including Chile, Estonia, Iceland, Israel, Italy, Mexico, the Netherlands, Turkey and the United Kingdom) proactively publish the list of public servants and their salaries (OECD, 2011) (Table 2.2).

Table 2.2. **Proactive disclosure of information by central government (2010)**

Country	Budget documents	Annual ministry reports, including accounts	Audit reports	All government policy reports	Commercial contracts over a stipulated threshold	List of public servants and their salaries	Administrative data sets	Information describing the types of records systems and their contents and uses	Information on internal procedures, manuals and guidelines	Description of the structure and function of government institutions	Annual report on freedom of information law	Freedom of information procedural information
Australia	⊙	●	⊙	○	⊙	○	⊙	●	●	●	⊙	●
Austria	⊙	○	⊙	○	○	○	⊙	○	⊙	⊙	○	⊙
Belgium	⊙	○	○	⊙	○	○	⊙	○	○	●	⊙	⊙
Canada	●	●	●	○	●	○	⊙	●	●	●	●	⊙
Chile	●	⊙	●	○	●	●	○	○	○	●	⊙	⊙
Czech Republic	●	●	○	○	○	○	○	○	●	●	●	●
Denmark	⊙	⊙	⊙	⊙	○	○	⊙	⊙	⊙	⊙	○	○
Estonia	●	●	●	●	●	●	●	●	●	●	●	●
Finland	●	●	●	●	●	○	●	●	⊙	⊙	○	●
France	●	●	○	⊙	○	○	○	○	○	●	●	●
Hungary	●	●	●	●	●	○	●	●	●	●	●	●
Iceland	⊙	⊙	⊙	⊙	○	⊙	⊙	○	⊙	⊙	⊙	⊙
Ireland	○	⊙	⊙	○	⊙	○	○	○	⊙	●	●	⊙
Israel	●	●	⊙	○	○	⊙	○	⊙	●	●	●	●
Italy	●	●	●	●	●	●	⊙	⊙	⊙	●	●	●
Japan	⊙	○	⊙	○	⊙	○	○	⊙	○	⊙	⊙	⊙

Country	Budget documents	Annual ministry reports, including accounts	Audit reports	All government policy reports	Commercial contracts over a stipulated threshold	List of public servants and their salaries	Administrative data sets	Information describing the types of records systems and their contents and uses	Information on internal procedures, manuals and guidelines	Description of the structure and function of government institutions	Annual report on freedom of information law	Freedom of information procedural information
Korea	●	●	●	●	●	○	●	●	●	●	●	●
Luxembourg	◉	◉	○	○	○	○	○	◉	○	◉	○	○
Mexico	●	●	●	●	●	●	◉	●	●	●	●	◉
Netherlands	◉	◉	◉	◉	○	◉	◉	○	◉	◉	◉	◉
New Zealand	●	●	○	○	●	○	◉	○	○	○	●	●
Norway	◉	○	○	◉	○	○	○	◉	◉	◉	○	◉
Poland	○	●	○	○	○	○	●	○	○	●	○	●
Portugal	●	●	●	◉	●	○	○	●	●	●	●	○
Slovak Republic	●	○	○	●	○	○	◉	◉	◉	●	○	●
Slovenia	●	●	●	●	○	○	●	●	●	●	●	●
Spain	●	●	●	○	●	○	◉	◉	●	●	○	○
Sweden	◉	◉	◉	◉	○	○	◉	◉	○	◉	○	◉
Switzerland	◉	◉	◉	○	○	○	○	○	◉	◉	◉	◉
Turkey	●	●	●	◉	○	●	○	●	○	●	●	●
United Kingdom	◉	◉	◉	○	◉	◉	◉	◉	○	◉	●	●
United States	◉	◉	◉	◉	◉	○	◉	●	●	●	●	●

Country	Budget documents	Annual ministry reports, including accounts	Audit reports	All government policy reports	Commercial contracts over a stipulated threshold	List of public servants and their salaries	Administrative data sets	Information describing the types of records systems and their contents and uses	Information on internal procedures, manuals and guidelines	Description of the structure and function of government institutions	Annual report on freedom of information law	Freedom of information procedural information
Total OECD32												
● Required to be proactively published by FOI law	17	17	12	8	11	5	6	11	12	19	16	16
⊙ Not required by FOI law, but routinely published	13	10	11	10	5	4	15	11	10	11	7	12
○ Neither required nor routinely published	2	5	9	14	16	23	11	10	10	2	9	4

Notes: (1) The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law. (2) Data are not available for Germany and Greece. Luxembourg and Brazil are currently drafting laws on access to information. Some categories of information are required to be disclosed by laws other than FOI. (3) Austria: Freedom of information procedures are required to be published by the general law for administrative procedures (Allgemeines Verwaltungsverfahrensgesetz - AVG). (4) Chile, Estonia and Israel publish information on the salaries of all public servants, whereas Hungary, Italy, Mexico, the Netherlands, Turkey and the United Kingdom publish salary information for some public servants, such as managers who earn at the top of salary scales.

Source: OECD (2011), *Government at a Glance 2011*, OECD Publishing, Paris, http://dx.doi.org/10.1787/gov_glance-2011-en.

Costa Rica's Transparency and Access to information draft law is in line with OECD practices in this area, as Article 9 establishes that each institution must proactively publish a wide range of information including:

- regulatory framework

- organisational structure, core competencies and services

- institutional directory

- institutional plans and budgets and their implementation and evaluation reports

- personnel recruitment processes

- mechanisms for performance evaluation of public officials

- wage index

- annual procurement plans

- annual reports

- internal audit reports

- proceedings of the collegiate bodies established by law

- full texts of public works contracts, consultancies as well as all those that apply to public biddings

- mechanisms for citizen participation

- any other information that is deemed useful or relevant, in addition to statistical information, which answer the questions most frequently asked by the public.

However, the draft law does not specify the location for this information to be proactively published. It can be done either at a single location such as a central website, as is the case in 81% of OECD countries, or on each Ministry or Institution's individual website, or both (Figure 2.1). Providing the location where the information will be available is important to guide citizens in their search for information. In addition, how the information is published is equally important, as information must be timely, up-to date, reliable, easy to understand and re-usable. For instance, 63% of OECD countries publish administrative data sets, and a majority have established provisions in laws or policies requiring electronic information to be published in formats that allow for re-use and manipulation of the information (e.g. open formats). Countries like Australia, New Zealand, the United Kingdom and the United States provide access to public data in a

reusable format through a central website (e.g. data.gov) (OECD, 2011). The draft law does not contain any provisions on how (in what format) the information should be published.

Figure 2.1. **Location of information proactively disclosed by the central government**
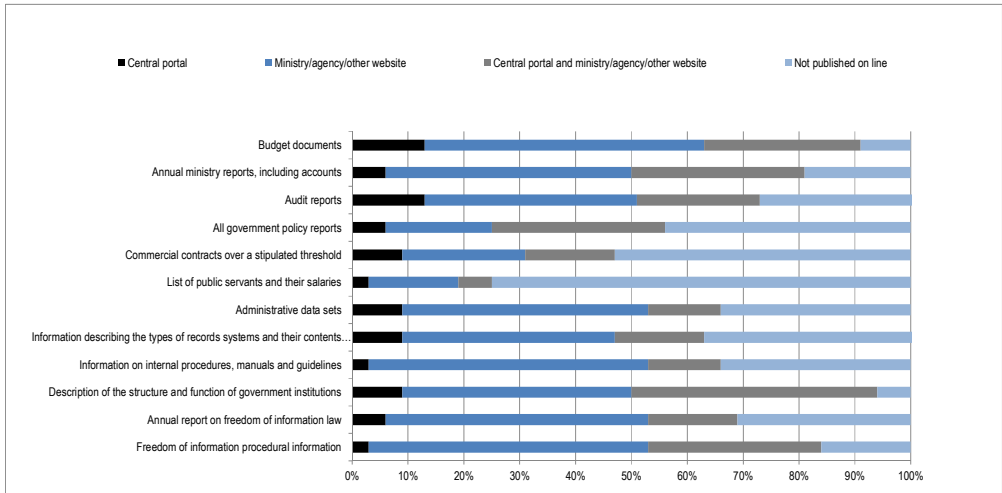
Notes: Data are not available for Germany and Greece.

Source: OECD (2011), *Government at a Glance 2011*, OECD Publishing, Paris, http://dx.doi.org/10.1787/gov_glance-2011-en.

Although there is not any specific legislation setting the basis for proactive disclosure, there have been many individual initiatives on this matter, notably the *Red Institucional de Transparencia* (Box 2.2) and the Integrated System of Contract Information (SIAC – the Spanish acronym), which tracks procurement spending and offers detailed information by type of procurement procedure and details amounts of spending by entity. It is available for public consultation on the Comptroller General's webpage.

Box 2.2. *Red Institucional de Transparencia*

The Costa Rican *Defensoría del Pueblo* established the Inter-institutional Transparency Network (*Red Interinstitucional de Transparencia*). It is intended to allow citizens online access to information on the administration of public resources, such as budgets, incomes, contracts or studies. Moreover, the Network publishes an overview of legislation relevant to the access on public information and transparency and anticorruption. Established in 2004, the Network works with various public sector institutions, including most ministries, as membership criteria are very inclusive. Accordingly, the prerequisites to join the network are the commitment to tackle corruption, accompanied by the political will to do so effectively through feasible actions. The Network's website lists relevant laws on anti-corruption, as well as members of the Network at the national, municipal, decentralised and CSO level.

One of the Network's activities most visible initiatives was to set up a Costa Rican Public Sector Transparency Index (*Índice de Transparencia del Sector Público Costarricense)*. The Index is an evaluation instrument and was established in co-operation with the Centre for Research and Capacity Building in Public Administration (*Centro de Investigación y Capacitación en Administración Pública*) at the University of Costa Rica and the subsidiary company of the Costa Rican Institute of Electricity (ICE), *Radiográfica Costarricense S.A.* The Index uses international best-practices as a baseline to assess the status quo of the degree of transparency of the public institutions' websites in Costa Rica.

The Index was elaborated in a scientific manner with clearly defined indicators, which provide the basis for the annual report on the openness and accessibility of information on the institutions' websites. As summarised in the 2015 Annual Report: "All these [initiatives] aim at strengthening the experience of effective democratic governability, which promotes the improvement and the State modernisation in light of the new tendencies and orientation towards open government."

Source: Defensoría de los Habitantes (n.d.)*, Red Interinstitucional de Transparencia*, http://dhr.go.cr/red_de_transparencia/index.aspx (accessed 8 February 2016).

Procedure to request information

Ease of filing requests

The right to information depends largely on the degree of accessibility guaranteed by freedom of information laws, the ease of filing requests and the individual protection granted to those requesting information. Narrow eligibility conditions to file a request, long response times or unjustifiably or inappropriately high fees charged by institutions are all factors that can limit or undermine the right to know.

As in 71% of OECD countries (OECD, 2011), the Costa Rican draft law does not establish any legal restrictions concerning the status of applicants. Article 10 provides that "Any natural or legal person, private or public, individually or collectively has the right to request public information, which shall not be conditioned or limited to the demonstration of a specific interest in the information requested". In addition, the request can be made in writing or verbally, electronically, by phone or by any other similar means. However, the law does not indicate where the information can be requested, if this is to be done via a central portal, a hotline or directly to the entity in question. One way for Costa Rica to homogenise the process for requesting information online would be to develop a single request form to be used by all entities.

According to the draft law, the request must include the following information:

- name, surname and ID number. Under 12 years old, ID number is not required

- clear and precise description of the information requested

- place or means to receive notifications

- indication on how the requester wants to receive the information.

However, if all information requested is not provided, the request for information is not processed. This means that the procedure does not permit anonymous information requests. In this regard, Costa Rica goes against principles set by the Organization of American States' (OAS) Model Law on Access to Public Information, which states that any person making a request for information in writing, by electronic means or orally to any public authority shall be entitled to, among other things, make an anonymous request for information.

Along these same lines, Article 4.2 of the Council of Europe's Convention on access to official documents provides that "member states may give applicants the right to remain anonymous, except when disclosure of identity is essential in order to process the request". (OECD, 2010) Yet, in this regard, few OECD countries have enacted strong provisions to protect the privacy and integrity of parties and individuals requesting information. Among the few examples of this are ATI laws in seven countries that contain provisions that providing for the anonymity of requestors. In Finland, the person requesting information does not need to identify him/herself nor provide reasons for the request, unless this is necessary for the exercise of the authority's discretion or for determining if the person requesting information has the right to access the document.

Other countries, such as Australia, Ireland, the Czech Republic, Mexico, the United Kingdom and the United States provide de facto anonymity because they do not require applicants to provide proof of identity, while in Canada, for instance, the identity of the applicant is protected by federal law (Figure 2.2).

Figure 2.2. **Individual protection granted to those requesting information**
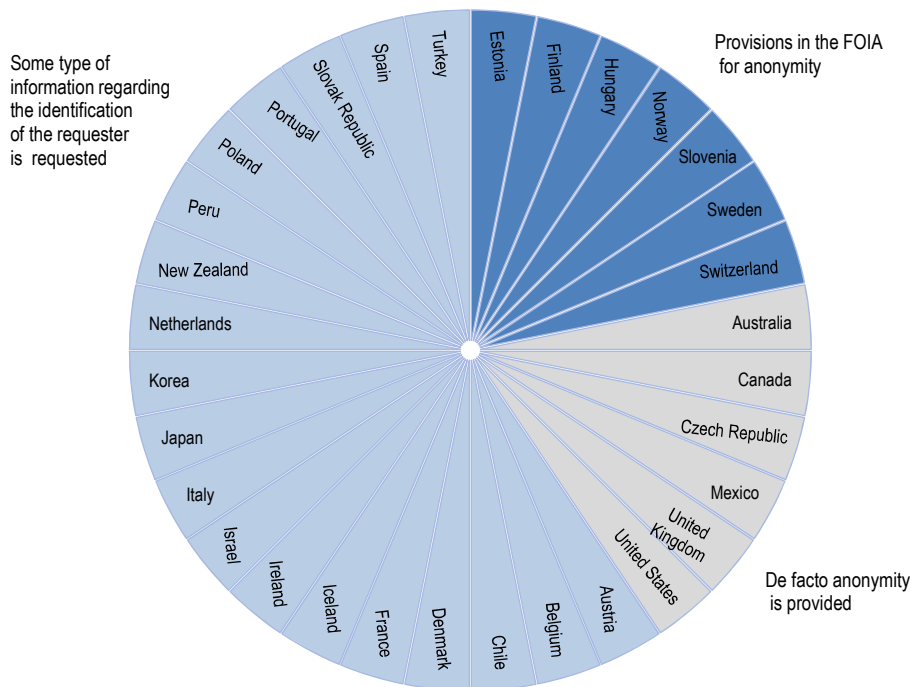
Furthermore, information needs to be provided in a reasonable period of time. According to the OAS Transparency Model Law, each public authority must respond to a request as soon as possible and in any event within twenty working days of receiving it. Costa Rica's draft law, in Article 14, requires public entities to provide the information immediately. In case this is not possible, the entity has a period not exceeding ten working days to provide

the information. This term may be extended exceptionally for ten additional days if it unusually difficult to gather the required information. In this case, the entity shall disclose in writing, before the expiration of the first deadline, the reasons that make such an extension necessary.

This is in line with OECD good practice, as almost all countries have established standards for timely responses to requests for information in their laws or in related legal documents, usually within 20 working days or less; for instance, 5 days in Estonia; 10 days in Portugal; 15 days in the Czech Republic, Finland and Poland and 20 days in Slovenia and the United Kingdom (OECD, 2010).

According to the OAS Model Law on Access to Public Information, should access to information be denied the requester must be informed of the reason and legal justification for not providing the information, well as informed as to the possibility to appeal the decision. Although the Costa Rican draft law provides that "the denial of access to the information requested, verbally or written, must be properly substantiated", this denial is issued in writing only if the initial request was made in writing. "Should a verbal request be denied, and should the requester want a record of the refusal, he/she make the request in writing so that the administration can respond in the same way". It is important that public officials respond to each request in writing, stating the reasons for the denial as stated for disclosure of partial information (Article 15). This will limit the possibility that the public officials responsible for responding to requests for information might refrain from responding or to exercise excessive discretion when delivering the information, and will also reduce legal uncertainty.

Fees

According to the Common European legal standards and the OAS Model Law on Access to Public Information, it is generally acceptable for administrative authorities to charge a reasonable fee for a request. A distinction should be made between access to documents that are already available and access to information that involves research, elaboration or processing on the part of the administration. In this regard, all OECD countries, with the exception of Iceland and Poland, apply fees at one or more stages of the information request process, most often to cover the cost of reproduction. In about half of countries, fees are also related to the cost of sending the documents, although several countries (such as Australia and Finland) waive these fees if the information is sent electronically. Most fees are variable, meaning that they depend on the number of pages to be reproduced or the amount of time required to process the request (for example). When a variable fee can be charged, a cap on the size of this fee is

applied only in a limited number of countries (Austria, Finland, France, Italy, Norway and Portugal) (OECD, 2011).

The Costa Rican draft law stipulates that fees must only reflect the cost associated with the reproduction of information, which has to be determined by each entity. To ensure consistency and avoid illegal costs, it is important that the fees set for the reproduction remain the same for each entity.

Information officer

To ensure the proper implementation of the ATI law, public entities must have at their disposal the proper financial, and human resources, as well as the necessary equipment to carry this task. Some ATI laws provide for the appointment of specialised officers. It is worthwhile to establish background and experience profiles for these public officials responsible for access to information in order to improve quality of service and access to information. In addition, specialised officers should be continuously trained and their capacities strengthened to reflect the challenges of dealing with requests to access information.

In addition to the roles and responsibilities of the public official designated as information officer, the law should clearly state the sanctions for impeding access to information. Access can be impeded by the destruction, falsification or alteration of information, or by arbitrarily delaying the disclosure of information. In most countries, there are civil penalties for this administrative offense, although increasingly countries are providing for some kind of criminal penalties.

The draft law provides that a public official can be sanctioned should he/she:

- obstruct, hinder or arbitrarily prevent access to full or partial information, or unlawfully lose or destroy such information

- unjustifiably neglect the delivery of information

- The sanctions applied are solely administrative:

    – a verbal or written reprimand

    – suspension, without pay, per diems or stipends of up to 30 days

    – removal from public office or the cancellation municipal elected officials' credentials.

Going further, Costa Rica's draft law provides that if a private company carrying out an activity of public interest arbitrarily obstructs the access to information, it can be sanctioned with a fine ranging from 1 to 15 times the

base salary (the base salary for 2016 is set at CRC 424 200, approximately EUR 706).

Reporting

It is important for public entities to keep records of requests for information and on the corresponding activities undertaken by public authorities pursuant to these requests or to promote compliance with the ATI. The reports could contain information such as the number of requests for information received, granted (fully or o partially), the main justifications for denying access to public information and the number of appeals made, with details about those for which there were rulings in favor.

In addition, these reports may help the government to identify challenges in the implementation of the law, to better tailor the training of officials to their needs, to adapt the guidelines to these challenges, or even, if necessary, to propose modifications to the law. In addition, these reports also allow citizens to monitor entities' compliance with the law. This aspect is missing from the current draft law, as no reporting mechanisms are foreseen. It would be useful for Costa Rica's ATI law to mandate reporting, on an annual basis or more frequently, as necessary.

Exceptions

Although ATI legislation generally provides the right to access all public information, every piece of ATI legislation identifies a list of exemptions to this right, which in layman's terms, means that by law some institutions are permitted to withhold certain types of information. According to Common European legal standards, two issues must be addressed when applying exceptions to the right to access public information:

- **grounds**: protection of legitimate public interests, protection of legitimate private interests

- **legislative constraints on administrative discretion**: absolute exemptions: the harm test, relative exemptions: the balancing test.

Class tests and harm tests are two common ways to exempt information. Under class tests, access to any information that falls within a certain category (such as national security) can be denied. Under harm tests, the government can deny a request for information on the basis that disclosure would cause potential damage, for example to an individual or to the defence of the state (the two most commonly used harm tests). The class tests applied by the greatest number of OECD countries concern exemptions related to national security, international relations and personal data.

Exemptions to ATI requests can be either mandatory (the public entity is required to withhold the information) or discretionary (public entities can use their judgement to withhold or disclose information) (OECD, 2011) (Table 2.3).

Table 2.3. **Depth of central government freedom of information laws (2010)**

	Class test							Harm test				
	National security	International relations	Personal data	Commercial confidentiality	Law enforcement and public order information received in confidence	Internal discussions	Health and safety	Harm to persons	Harm to international relations, or to defence of state	Harm to commercial competitiveness	Harm to the economic interests of the state	Harm to law enforcement agencies
Australia	⊙	⊙	○	⊙	⊙	○	○	⊙	⊙	⊙	⊙	⊙
Austria	●	●	●	●	○	○	●	●	●	○	●	○
Belgium	●	○	○	○	○	○	○	●	●	●	●	○
Canada	⊙	⊙	●	●	⊙	⊙	○	⊙	⊙	●	⊙	⊙
Chile	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
Czech Republic	●	⊙	●	●	●	⊙	⊙	●	●	●	●	●
Denmark	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
Estonia	●	●	●	●	⊙	⊙	●	●	●	●	○	●
Finland	⊙	⊙	⊙	⊙	⊙	○	⊙	⊙	⊙	⊙	⊙	⊙
France	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
Hungary	●	●	●	○	●	○	○	○	○	○	○	○
Iceland	●	●	●	●	●	○	⊙	●	●	●	●	○
Ireland	●	●	●	⊙	●	⊙	●	●	●	●	⊙	●
Israel	●	●	●	⊙	⊙	⊙	○	●	●	⊙	○	⊙
Italy	●	●	⊙	⊙	⊙	●	●	⊙	●	⊙	●	●
Japan	⊙	⊙	⊙	⊙	⊙	⊙	⊙	●	●	●	●	●
Korea	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
Mexico	⊙	⊙	●	⊙	⊙	⊙	⊙	●	●	⊙	●	⊙
Netherlands	●	⊙	●	●	○	⊙	○	⊙	⊙	⊙	⊙	⊙
New Zealand	○	○	○	○	○	○	○	⊙	⊙	⊙	⊙	⊙
Norway	⊙	⊙	●	●	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
Poland	⊙	⊙	⊙	⊙	⊙	●	⊙	⊙	⊙	⊙	⊙	⊙
Portugal	●	●	●	●	●	○	●	●	●	●	○	○
Slovak Republic	●	●	⊙	●	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
Slovenia	⊙	⊙	⊙	⊙	⊙	⊙	○	⊙	⊙	⊙	⊙	⊙
Spain	●	○	⊙	●	●	○	⊙	○	○	○	○	○
Sweden	⊙	⊙	⊙	⊙	⊙	●	○	●	●	●	●	●
Switzerland	●	●	●	●	●	●	●	●	●	●	●	●
Turkey	●	⊙	●	●	⊙	⊙	○	●	●	●	●	○
United Kingdom	⊙	⊙	○	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙
United States	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	⊙	○	⊙
Russian Federation	●	●	●	●	●	⊙	●	●	●	●	●	●
Ukraine	○	⊙	⊙	○	●	○	●	○	○	○	○	○
Total OECD31												
● Mandatory	15	10	14	12	8	3	6	13	14	12	10	7
⊙ Discretionary	15	18	13	16	18	20	15	16	15	16	15	17
○ Not applicable	1	3	4	3	5	8	10	2	2	3	6	7

Notes: The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

Data are not available for Germany and Greece. Luxembourg is currently drafting a law on access to information and is not included in the table.

According to the Australian law, documents that contain personal data, internal government discussions and health and safety must be disclosed unless there is a public interest against it. Different criteria are applied to satisfy the "harm" tests for each individual category of exemptions indicated in the table.

Source: OECD (2011), *Government at a Glance 2011*, OECD Publishing, Paris, http://dx.doi.org/10.1787/gov_glance-2011-en.

Costa Rica's draft law provides a short list of exceptions in which the disclosure of information is forbidden (Article 8):

- Information protected by state secrecy and regarding national security (internal or external), defending national sovereignty or foreign relations of the Republic. State secrecy should be decreed by the President of the Republic together with the Minister in charge of the subject. Private information, documents and private communications and other sensitive data, protected by the right to privacy, honour and the inherent dignity of the person.

- Information whose disclosure would endanger the life, personal safety or health of any person.

- Information the disclosure of which would seriously threaten the public interest, under previous justification by the government.

- Information whose disclosure would threaten the moral or public order, under previous justification by the government.

- Information that is confidential or has restricted access by law.

There is widespread consensus as to the acceptability of the use of exemptions, but they need to be limited, used restrictively and properly justified in order to ensure that the public official's level of discretion remains low. It is important that decisions and justifications for the withholding information are tracked.

Furthermore, it is necessary to develop policies or guidelines for the classification and declassification of information to guide the public official in her/his interpretation and decision as to what information can or cannot be provided.

Appeals

When information is denied, most commonly there is a possibility to appeal the decision. Three approaches to this are common (World Bank, 2009):

- Individuals are given the right to make an "administrative appeal" to another official within the institution to which the request was made. If the administrative appeal fails, individuals may appeal to a court or tribunal, which may order disclosure of the information.

- Individuals are given a right of appeal to an independent ombudsman or information commissioner, who makes a

recommendation about disclosure. If the institution ignores the recommendation, an appeal to a court is permitted.

- Individuals are given a right of appeal to an information commissioner who has the power to order the disclosure of information. No further appeal is provided for in the access law, although the commissioner's actions remain subject to judicial review for reasonableness.

According to the Model Law on Access to Public Information, a requester can appeal a refusal of access to information within 60 working days. The requester can make an internal appeal to the head of the public authority or an external appeal to the Information Commission. Finally, the requester can challenge the decision of the Information Commission in court. In Europe, there are two basic models for reviewing administrative decisions on ATI requests. In the first model, the crucial reviewing role is performed by the courts, while in the second it is mainly entrusted to a specialised independent administrative authority. The draft law in Costa Rica only provides the possibility to appeal before the Costa Rican Institute for Access to Information (*Instituto Costarricence de Accesso a la Información*-ICAI) (more details below), not to the entity from which the information was requested.

Enforcement: A guarantor for the FOI law

Enforcement of the law is critical; if there is widespread belief that the legislation will not be enforced, this so-called right to information becomes meaningless (World Bank, 2009). The lack of proper enforcement mechanisms can lead to arbitrary denials, encourage a culture of silence and cause people to behave as if the law did not exist. Enforcement of the law includes among other things the possibility to receive appeals in case the information requested is not provided. It also includes a review process of the proper implementation of the law, with officials revising and following up on the annual reports or providing guidelines and training to public officials. The context in which the access to information law functions will help determine the best way of enforcing the law. However, in all cases it should be:

- independent from political influence

- accessible to everyone without legal representation

- timely

- affordable.

According to the OAS Model Law on Access to Public Information, an Information Commission must be established and placed in charge of promoting the effective implementation of FOI. It should have legal personality and operative, budgetary and decision-making autonomy and report to the legislature. It can be comprised of three or more commissioners, reflecting a diversity of skills and backgrounds. Specific duties and powers for the Information Commission need to be set, and may include

- reviewing any information held by a public authority, including on site

- *sua sponte* authorisation to monitor, investigate, and enforce compliance with the law

- issuing recommendations to public authorities.

In this sense, Costa Rica understands the need to either create a specialised entity or identify an existing institution with the necessary financial independence and human resources capacity to carry out the activities needed to guarantee the full implementation of the law.

The draft law provides for the creation of the Costa Rican Institute for Access to Information (*Instituto Costarricence de Accesso a la Información*-ICAI) with legal personality, budgetary independence and the necessary capacity. However, as mentioned above, this may be one of the reasons why the draft law has not been approved since 2014.

Costa Rica should follow the approach that best suits its own institutional framework. It could follow the examples of Chile, Mexico or the United States, as described in Box 2.3. However, acknowledging the large size of the decentralised sector in Costa Rica, it would also be possible for this role to be taken on by an entity that already exists, such as the *Procuraduría de la Ética* or the *Defensoría del Pueblo*. Nevertheless, all necessary financial and human resources should be provided.

Box 2.3. **Examples of bodies that provide oversight to transparency laws: Chile, Mexico and the United States**

Chile

The Council for Transparency is an autonomous public body with its own legal personality, created under the Law on Transparency of Public Service and Access to Information of the State Administration. Its main task is to ensure proper enforcement of the law, which was enacted on 20 August 2008 and became effective on 20 April 2009.

Box 2.3. **Examples of bodies that provide oversight to transparency laws: Chile, Mexico and the United States** *(continued)*

The entity is headed up by four designated counsellors, appointed by the President and confirmed by two-thirds of. This board is entrusted with the management and administration of the Council for Transparency. The counsellors serve six years in office, may be appointed only for one additional term and may be removed by the Supreme Court at the request of the President or the Chamber of Deputies.

The main functions of the council are as follows:

- to monitor compliance with the provisions of the Law on Transparency and apply sanctions in case of infringements of them

- to address challenges filed to the denial of access to information

- to promote transparency in the public service by advertising information from the state administration bodies

- to issue general instructions for the enforcement of legislation on transparency and access to information by the bodies of the state administration, and require them to adjust their procedures and systems to such legislation

- to make recommendations to the bodies of the state administration aimed at improving the transparency of its management and to facilitate access to the information they possess

- to propose to the President and to the Congress, where appropriate, rules, instructions and other regulatory improvements to ensure transparency and access to information

- to offer training, directly or through third parties, to public officials in matters of transparency and access to information

- to collect statistics and issue reports on transparency and access to information granted the organs of the state administration and on their compliance with this law.

Mexico

The *Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales* (INAI) (National Institute on Transparency, Access to Information and Protection of Personal Data) was established under the *Ley Federal de Transparencia y Acceso a la Información Pública gubernamental* in 2002 (Federal Law on Transparency and Access to Public Governmental Information).

The Institute is composed of a Presiding Commissioner and six other commissioners, who are appointed by the Federal Executive for six years, without the possibility of renewal of the term. As established in the law, the institute has complete independence and reports annually to the Congress. Its threefold mandate can be summarised as guaranteeing the access of governmental information to the public, fostering accountability and defending the right to privacy. In addition, the Institute aims to:

Box 2.3. **Examples of bodies that provide oversight to transparency laws: Chile, Mexico and the United States** *(continued)*

- assist in the organisation of the national archives

- promote a culture of transparency in public expenditures

- foster accountability within the government to raise trust among its citizens

- contribute to the processes of analysis, deliberation, design and issuance of judicial norms of relevance to the archives and personal data

- enhance the legislative processes targeted to improve and strengthen the normative and institutional framework for transparency and access to public information.

United States

In the United States, the Office of Government Information Services (OGIS), known as "the Federal FOIA ombudsman" was created within the National Archives and Records Administration (NARA). The OGIS was created when the Open Government Act of 2007 amended the Freedom of Information and is responsible for:

- Mediating disputes. The office offers mediation services to resolve disputes between persons making FOIA requests and agencies (non-exclusive alternative to litigation). It may issue advisory opinions if mediation has not resolved the issue.

- Serving as ombudsman. The office solicits and receives comments and questions from federal agencies and the public regarding the administration of FOIA to improve FOIA processes and facilitate communication between agencies and FOIA requesters.

In addition to these responsibilities, the OGIS also provides dispute resolution training for the FOIA staff of federal agencies, works closely with key FOIA stakeholders like the requester, community and open government advocates, and more.

The NARA is seen as an independent arbitrator distanced from the White House. According to its statute, the NARA shall be an independent establishment in the executive branch of the government. The administration shall be administered under the supervision and direction of the Archivist. The Archivist of the United States shall be appointed by the President by and with the advice and consent of the State. The Archivist shall be appointed without regard to political affiliations and solely on the basis of the professional qualifications required to perform the duties and responsibilities of the office of Archivist. The Archivist may be removed from office by the President. The President communicates the reasons for any such removal to each House of the Congress.

Sources: The Federal FOIA Ombudsmann, https://ogis.archives.gov/about-ogis/directors-bio.htm; Instituto Nacional de Transparencia, *Acceso a la Información y Protección de Datos Personales*, http://inicio.inai.org.mx/SitePages/misionViosionObjetivos.aspx ; Consejo Para la Transparencia, Chile, www.consejotransparencia.cl/que-es-el-cplt/consejo/2012-12-18/190048.html; www.leychile.cl/Navegar?idNorma=276363.

The necessity of a law on citizen participation to codify existing good practices and clarify institutional responsibilities

Citizen participation is a key dimension of open government. As will be discussed in greater detail in Chapter 4 of this Review, one of the priorities outlined in the National Development Plan (NDP) is to include the population in decision-making processes. As mentioned above (see also Box 2.1), the constitution of 1949 provides an important basis for citizen engagement as it includes the right of association, the right to assemble, the right to petition, freedom of expression, the right to vote and the right to organise into parties.

Costa Rica has several laws that touch on citizen participation in the policy cycle. For example, the Law on Foundations (Law 5338 from 1973) regulates how civil society organisations should function. The law recognises civil society organisations as private non-profit entities whose main goal is to promote social welfare. According to the Citizen Audit of Quality of Democracy done in 2000, the number of civil society organisations in Costa Rica totalled approximately 16 300 (*Estado de la Nación*, 2013).

In 2006, Costa Rica introduced the right of popular initiative. The Law on Citizen Initiative (*Ley de Iniciativa Popular*, Law 8491 of 2006) states that "during the ordinary session period of the Legislative Assembly, at least five per cent (5%) of the citizens registered in the electoral roll may exercise the initiative to draft laws or partially amend the Political Constitution." This right is, however, not applicable with regard to laws related to budgetary, tax or fiscal matters, loan approvals and contracts or acts of an administrative nature. Even though the law was generally welcomed by the public, some criticism has been voiced by different stakeholders of the threshold of five percent of the electorate to present an initiative to the Legislative Assembly (Ruiz Ramón, 2014). The Popular Initiative Office of the Legislative Assembly (*Oficina de Iniciativa Popular de la Asamblea Legislativa*) provides free technical advice for the drafting of bills.

The results of the Law on Citizen Initiative have been quite limited so far. Between 9 March 2006 (date of entry into force of the law) and 2 April 2014, only three projects were approved by the assembly:

- reforms and additions to the Law on Wildlife Conservation

- a law for integrated water resource management

- a bill to amend the Criminal Code and the Animal Welfare Act to punish the mistreatment of animals (*La Nación*, 2014).

With its constitutional basis found in Articles 105, 124, 129 and 195, Law 8492 of 2006 (*Ley de Regulación del Referéndum*) regulates the functioning of referenda. By means of a referendum the Costa Rican people can exercise the power to approve or repeal laws and to make partial amendments to the constitution. This law is linked to the previously mentioned Law 8491 of 2006 since the referendum may be called at the initiative of citizens or at the initiative of the Legislative or Executive branches.

The law regulates the methodology for and the binding nature of referenda. Yet, as a limitation to this, the constitution states that there may neither be more than one referendum per year, nor may any referendum may take place in the six months prior to or after a presidential election (added by clause a of Article 2 of Law 8281 of 2002). So far, the only referendum in to be held Costa Rica was on 7 October 2007, when citizens voted to approve the free trade agreement with the United States of America.

Law 9097 of 2013 (*Ley de regulación del derecho de petición*) sets forth that any citizen may exercise the right of petition, without prejudice or penalty, before any public institution, administration or authority, on any subject, matter or information of public concern (on this see also the previous section on the access to information law). The response time for a petition is ten days from the date of acceptance or admission. The right to petition has been recognised as a fundamental right enshrined in the constitution and citizens can therefore demand its free exercise under the *Recurso de Amparo*. The Constitutional Chamber (*Sala Constitucional*) has on several occasions used this legal mechanism to protect the right of access to public information.

Table 2.4 presents further laws in Costa Rica that include participation mechanisms.

Table 2.4. **Previous laws with participatory mechanisms**

Law	Participatory mechanisms
Organic Environmental Law	- Local committees inside the National System for the Conservation of Areas - Vigilance committees on natural resources - Public forums for projects with a high environmental impact
Law of Administrative Boards and Educational Boards, Community Development Law, Law of the Costa Rican Sports Institute, Urban Planning Law	All these laws include mechanisms for local participation in matters of public interest
Law for the Sea and Land Area	Consultation for the geographical space that it regulates
Law Regulating Public Services	Public hearings as a prerequisite for the adoption of a tariff decision regarding a public service
Law decentralising the hospitals and clinics of the Costa Rican Social Security Fund	Creation of health boards with citizen participation

Source: Author, based on information taken from Estado de la Nación, Auditoría Ciudadana de la Democracia (2016), "Participación ciudadana en las políticas públicas", Chapter 11, www.estadonacion.or.cr/otras-publicaciones-costarica/productos-intermedios-pen/auditoria-ciudadana-democracia (accessed 1 February 2016).

For the time being, formal participation mechanisms protected by the Constitution and by law, such as referenda, plebiscites and the law of citizen initiative seem to be underused. However, some institutions have created mechanisms that are not necessarily legally codified but that have been used by citizens to influence decision making processes at the national and the local level (see Chapter 4). In order to provide an integrated framework for citizen participation, Costa Rica could draft a Law on Citizen Participation. The Law could formally define some of the informal participation channels that are widely used by the Costa Rican population such as community organisations and youth groups dedicated to the recovery and reactivation of public spaces (through sports, art, recreation), protection of the environment, violence prevention, etc. The process of drafting the law could be led by the central government, which could work to ensure the active participation of citizens and civil society organisations.

The process of passing a new law in the Legislative Assembly, as well as collecting and acknowledging the existing informal channels of participation can be a challenging one (see also Chapter 1), and it will require a significant amount of time. Costa Rica could start by creating a platform, accessible to citizens, entities from the national level, the decentralised sector and the subnational level, for the exchange of good practices. Publishing successful practices could increase awareness about the importance of participation and create the necessary consensus for the passage of a future law.

An advancing legal framework for digital government and open data

Governments are increasingly recognising that digital government and the use of ICTs can be important levers for open government. The OGP also included harnessing the benefits of new technologies as one of its four open government pillars. In 2015, the OECD adopted its first Recommendation on Digital Government Strategies (see Box 2.4) which aims to support the development and implementation of digital government strategies that bring governments closer to citizens and businesses. It recognises that today's technology is not only a strategic driver to improve public sector efficiency, but that it can also support the effectiveness of policies and create more open, transparent, innovative, participatory and trustworthy governments.

Most OECD and OGP countries have started elaborating legal frameworks for the effective implementation of digital government policies (OECD, forthcoming). For instance, some of these laws provide the framework supporting electronic transactions, allowing electronic media to be legally equivalent to physical documents.

As discussed in the OECD Report on Open Government in Latin America (OECD, 2014a), the framework establishing the conditions for the use of ICTs and open data in the public administration of Costa Rica is fairly solid when compared to OECD standards. As far back as 1990, Costa Rica had already started taking its first steps towards a digital government with the publication of Law 7169 on the Promotion of Scientific and Technological Development. This legal framework advanced with the publication of Law 8220 on Citizen Protection against Excessive Requirements and Excessive Administrative Procedures, which included important references to the digital agenda. Other important laws include Law 8454 on Certificates, Digital Signatures and Electronic Documents from 2006 and Law 5484 from 2005, which states that a digital signature has the same validity as a handwritten signature.

In 2006, the Constitutional Chamber of Costa Rica ruled that the public administration must use open formats and technological neutrality (Ruling 2006-08995 from 2006). The decision mentions that the use - whether by public administrations or private organisations that perform public tasks - of electronic formats which prevent free access to information and whose usage depends on the conditions imposed on the users by the companies that own these electronic products, stands in opposition to the right to information set forth by Article 30 of the Constitution. According to the ruling "[public entities] must use (…) an open format guaranteeing universal access to information and providing full accessibility to all public information to people with disabilities, starting as of their access to the web page without any additional requirements, thus enabling text conversions into electronic formats and data storage through the use of their desired software and according to their needs" (OECD, 2014a).

A law on access to information is one of the pre-conditions for a move towards open data and could be a foundation upon which to build the implementation of an open data policy. This Review recommends continuing to bridge the gap between the country's access to information and open data agendas by including explicit references to open data in a future Access to Information Law.

> ### Box 2.4. **Summary of the three axes of digital government**
>
> The OECD adopted a recommendation for member governments on how to manage digital government. This recommendation is the result of a consultation process with member governments and others. The recommendation recognises the need to use ICTs to improve governance through three broad axes:
>
> To "engage citizens and open up government to maintain public trust", governments need to understand new emerging technologies to reap their potential. While this is seen as a risk by some countries, others consider opening up the rich resources of government data and enhancing engagement through social media as public sector imperatives. Securing engagement and trust means protecting citizens' and companies' sensitive information in a data-heavy future driven by powerful analytics.
>
> Today, there is no doubt that ICT is a core instrument to advance public sector reform. "Adopting joined-up approaches in delivering public value" is key to ensuring the right level of consensus and common national understanding of strategic goals. The establishment of digital leadership positions although necessary, is not sufficient. Networked and horizontal governance across national and subnational government institutions can provide the mechanisms for nationwide commitment and local implementation.
>
> Governments shared their experiences on how to manage strategic IT projects and "strengthen the capabilities to ensure returns on investments". Large IT projects need to be broken into manageable parts, and strong central management oversight balanced with the use of more agile IT procurement methods. Creating partnerships, listening to and engaging users to ensure quality and value creation, is an essential foundation for success.
>
> *Source*: OECD (2014b), "OECD Recommendation of the Council on Digital Government Strategies", OECD, Paris, www.oecd.org/gov/digital-government/recommendation-on-digital-government-strategies.htm.

Open government efforts to fight corruption

In Transparency International's latest Corruption Perception Index, Costa Rica is one of the Latin American countries with the lowest perception of corruption and ranks 49th among 177 countries globally. Despite the important advances it has made in promoting integrity, the country is under great pressure to demonstrate further progress in fighting corruption and to respond to popular discontent with the integrity of its public servants. As discussed in Chapter 1, the current administration includes the "frontal fight against corruption" as a key element of the NDP.

The OECD has developed a great number of principles and instruments in this area (see Box 2.5). While these principles and instruments are not the

focus of this publication, they are part of the basis for the development of a country's open government agenda.

Box 2.5. **OECD Integrity Principles**

The legal instruments in relation to enhancing integrity and preventing corruption in public governance are broken down into the following areas:

Standards of conduct among public officials

- OECD Recommendation on Improving Ethical Conduct in the Public Service including Principles for Managing Ethics in the Public Service (1998).

- OECD Recommendation on Guidelines for Managing Conflict of Interest in the Public Service (2003).

Interaction between public and private sector

- OECD Recommendation on Public Procurement (2015).

- OECD Recommendation on Principles for Transparency and Integrity in Lobbying (2010).

Bribery in international transactions

- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

- OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

Source: www.oecd.org/gov/ethics/oecd-legal-instruments-on-corruption-prevention.htm.

The country has signed key anti-corruption conventions of the OAS and the UN (see Table 2.5). For instance, Costa Rica signed and ratified the Organization of American States' (OAS) Inter-American Convention against Corruption in 1997, and the UN Convention against Corruption (UNODC, n.d.). The country is also part of the OECD-Latin America Anti-Corruption Programme (OECD, n.d.), but has not yet signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD, n.d.).

Table 2.5. **International Integrity Conventions signed by Costa Rica**

Organisation	Treaty/ international agreement	Main objective	Signed/ratified by Costa Rica
Organization of American States (OAS)	Inter-American Convention against Corruption" and its follow up implementation mechanism	The Convention is a legal instrument in which the signatory states acknowledge that corruption has a transcendental incidence in the continent, typifies corruption events and establishes agreements related to international co-operation.	1997
United Nations (UN)	Convention against Corruption	The Convention promotes and strengthens measures aimed at preventing and fighting corruption more effectively and efficiently; to promote, facilitate, and support international co-operation and technical assistance in preventing and fighting corruption, including the recovery of assets; to promote integrity, accountability obligations and the proper management of public issues and goods.	2003/2007

Source: UNODC (2015), United Nations Convention Against Corruption- Signature and Ratification Status as of 1 December 2015, www.unodc.org/unodc/en/treaties/CAC/signatories.html (accessed 11 February 2016).

On a national level, the country has passed different laws and decrees on integrity and on the fight against corruption, including in the key area of public procurement. The Law against Corruption and Illicit Enrichment in Public Service (*Ley contra la Corrupción y el Enriquecimiento Ilícito en la Función Pública*, Law 8422 of 2004) is aimed at preventing, detecting and sanctioning all forms of corruption by civil servants (*Tribunal Supremo de Elecciones*, 2005). The law includes a series of articles designed to protect informants on acts of corruption, ensure the limitation of access to files during the course of an investigation, and authorise access thereto by the General Comptroller of the Republic's Office. Most OECD countries have also established specific laws on whistle-blower protection. Costa Rica could consider including the elaboration of such as law in its next OGP Action Plan.

A legal framework for open government at the local level

Countries throughout the OECD and the OGP community are increasingly trying to include lower levels of government in their open government efforts. A great number of good practices, particularly with regard to citizen participation, can be found at the local level. As will be discussed in greater detail in Chapter 5, Costa Rica has taken its first steps towards extending its open state approach to the subnational level.

Involving the local level in the country's efforts to foster transparency, openness and accountability requires an adequate legal framework. In Costa Rica, the Municipal Code (Law 7794 of 1998) is well advanced in this regard. It establishes the obligation for the Municipal Council - the governing body of the municipality - to promote active, conscious and democratic participation of the people in the decisions of the local government, it strengthens popular consultation mechanisms and it establishes the District Councils, the governing bodies at the lower subnational level, as intermediaries between the community and local government (*Estado de la Nacion*, 2011).

Article 47 of the Municipal Code mentions that sessions of the Municipal Council shall be transparent: "For each session of the Council a report shall be written, and therein shall be recorded the agreements reached and, briefly, the deliberations, except for the case of appointment or election, for which only the agreement will be recorded". According to Article 5, "Municipalities encourage active, conscious and democratic participation of the people in local government decisions. Public institutions are obliged to collaborate so that these decisions are duly met".

As outlined in this version of the Municipal Code, the following consultation and participation mechanisms exist at local level:

- **Town Hall Meetings (*Cabildo*)** are public meetings of the Municipal Council and the District Councils. Canton residents are invited to participate in order to discuss matters of interest to their communities. The nature of the council is advisory and it is held prior to the decision that the Council intends to take. The result of this consultation is not binding. Town Hall Meetings are oral hearings, and participation is voluntary. All residents of a given canton can be invited (or just those in a particular district when the decision to be made is not of general interest to the entire municipality).

- The **plebiscite** is a popular consultation by which the inhabitants of a municipality decide on an issue of regional importance, or decide upon the recall of a municipal mayor and / or deputy mayors. The result is binding for the Municipal Council. The decision resulting from the plebiscite takes the form of a municipal agreement. In their vote, residents choose between two options ("yes" or "no") and the decision is made by majority vote. Unlike in Town Hall Meetings, the vote is collected in writing. The entire municipality can be called upon to participate, or just a part of it. In the latter case, the result is discretionary. In the specific case of the call for dismissal of a mayor, the vote must necessarily be carried out at cantonal level.

- The **referendum** is a type of popular consultation that seeks the passage, amendment or repeal of a regulation or municipal legislative act. A referendum is organised in the integration phase of an act, as the municipal agreement is taken by the Council but subject to ratification by the neighbours. Until the agreement has been ratified, it does not have effect, and if it is not approved in the referendum, it is eliminated. The vote must be in writing and citizens have the option to vote "yes" or "no".

Further articles of the Municipal Code that foresee the participation of citizens include:

- In line with Article 13 l), the council may "approve the Municipal Development Plan and Annual Operational Plan that are developed by the mayor (…). These plans form the basis of the budgetary process of municipalities". According to the commented version of the Municipal Code, these plans should be developed in a participatory and consultative process in order for needs and proposals of the population to be included. The commented version of the Municipal Code stresses that it is essential to rethink the traditional way of municipal planning and instead conceive of the process as an opportunity to define consensus regarding local priorities.

- Article 14 of the Code regulates the direct election of the Mayor, which was introduced by a reform in 1998. Previously, the mayor's appointment was in the hands of the members of the City Council. Direct election, introduced as part of the country's decentralisation process, gives greater participation to the community.

The Municipal Code, hence, provides an ample and quite elaborated framework for a participatory subnational government. In theory, citizens should have the opportunity to be involved in most if not all decisions that affect their lives. However, other dimensions of open government, such as access to information and transparency, the fight against corruption and digital government, are less elaborated or absent from the Municipal Code. This is largely due to the fact that they are elaborated in national legislation which is also applicable to subnational governments. As will be discussed in Chapter 4, capacity constraints and limited support from the national level often hinder the effective implementation of open government policies in municipalities.

Costa Rica's institutional framework for an open state

Experience from across Latin America indicates that most governments have been quite active in updating their legal and regulatory frameworks, but these efforts have not always been complemented with an equally focused set of actions aimed at ensuring adequate implementation (OECD, 2014a). In addition to a well-defined legal framework, effective and efficient implementation requires the establishment of a clear institutional framework.

The institutional framework provides the basis for inter-institutional co-operation and co-ordination (see Chapter 3 for a discussion of the co-ordination of OG policies). The move towards an open state has created the necessity to include an even wider range of actors in the OG process. Costa Rica is already co-ordinating its open government agenda with the judiciary, which has been involved in the elaboration of the second OGP Action Plan (see Chapter 3 for a discussion of the OGP Action Plan). Additionally, the judicial branch is elaborating its own "open judiciary" policies. The same applies to the legislative assembly, which is working on an "Open Legislature" initiative. The *Defensoria de los Habitantes*, the Costa Rican Ombudsman (attached to the Legislative Assembly but with functional and administrative independence) has become a very active player in the open government ecosystem of Costa Rica. For instance, it has designed such advanced tools as the Transparency Index, which this section will present.

This section will analyse the responsibilities of the institutions which are directly involved in the open government and OGP processes and will assess the role of other key actors from government, the judiciary, the legislative branch and civil society in shaping open state reforms.

The creation of the National Open Government Commission – Costa Rica's open government leaders and visionaries

In April 2015, Decree 38994-MP-PLAN-MICITT created the National Commission for Open Government (*Comisión Nacional por un Gobierno Abierto,* CNGA) (La Gaceta, 2015) as the main actor in Costa Rica's open government process. The CNGA is charged with co-ordinating and facilitating the implementation of open government in the public administration. It accompanies the design and evaluation of national open government action plans (Article 3) and proposes public policies in this area to the office of the Presidency of the Republic (La Gaceta, 2015).

According to Article 4 of its founding Decree, the Commission has a wide variety of tasks, including to:

- propose public policies, guidelines, strategies and actions plans in the area of open government

- foster the culture and education of citizens on open government

- propose a methodology to evaluate the implementation and results of open government

- support institutions in the design of the necessary legal framework for the adoption and promotion of open government

- co-ordinate necessary actions for the implementation of the principles of open government in the public administration with the corresponding entities

- propose the methodology and monitoring instruments for the Action Plans

- organise activities which shall monitor the implementation of the open government commitments in the Action Plans

- issue technical information on the progress of the implementation of the Action Plans and final evaluation reports on the implementation of the open government Action Plans

- promote the rapprochement and exchange among different actors at the national level to promote open government

- collaborate in establishing the technological architecture of open government

- develop and use the liaison with international organisations for the promotion and implementation of the model of open government

- ensure the existence of joint projects and activities on open government in order to create synergies and opportunities for co-operation

- facilitate reflection on the part of entities to develop capacity and knowledge on managing open government in the country

- create sub-commissions to meet the specific requirements of the CNGA.

The Decree also establishes five sub-commissions in charge of supporting systems, participation, education, transparency and collaboration and allows for additional sub-committees to be created if necessary (La Gaceta, 2015). Figure 2.3 presents the existing sub-Commissions of the National Open Government Commission.

Figure 2.3. **Subcommittees established by the CNGA to date**

Source: Ministry of the Presidency (n.d.), "*Que es Gobierno Abierto*?".

The Commission includes members from key Centre-of-Government (CoG) institutions, the wider central government, civil society, academia and the private sector (see Figure 2.4). It is made up of one representative from the Ministry of the Presidency, the Ministry of Planning and Economic Policy, the Ministry of Finance, the Ministry of Justice and Peace and the Ministry of Science, Technology and Telecommunications, respectively. Apart from the government, two representatives from civil society organisations (*Abriendo Datos* and *Costa Rica Íntegra*), one representative from the National Council of University Presidents (*Consejo Nacional de Rectores,* CONARE) and one representative of the Union of Costa Rican Chambers of Commerce and Associations of the Private Sector (*Unión Costarricense de Cámaras y Asociaciones del Sector Empresarial Privado* UCCAEP). Chapter 3 of this Review will provide recommendations on how the makeup of this commission could be broadened in order to reflect the new open state approach.

Figure 2.4. **Composition of the National Open Government Commission (CNGA) to date**
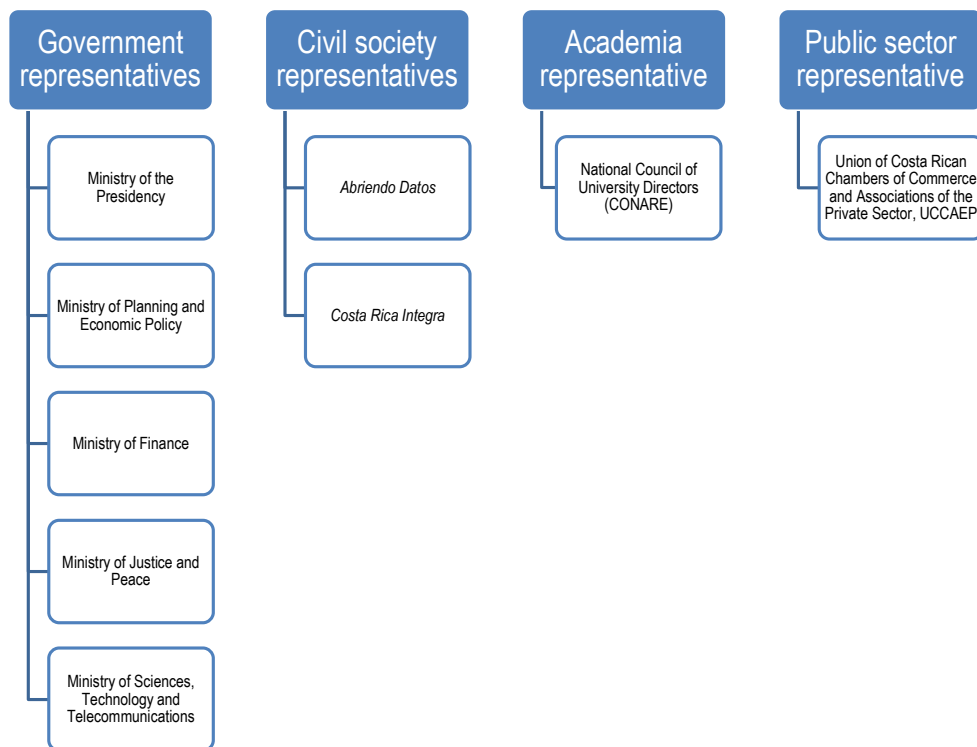
Source: Government of Costa Rica (n.d.), *National Open Government Commission*, http://gobiernoabierto.go.cr/estrategia/comision-nacional-de-gobierno-abierto/.

The Ministry of the Presidency is in charge of choosing the two representatives of civil society. In order to be eligible, the civil society organisations (CSOs) must be active in the realms of transparency, the fight against corruption, access to public information or open data (La Gaceta, 2015). Interested organisations can send a letter of intent to the Ministry of the Presidency, which then chooses the member organisations. The appointed organisations serve for two years, with the possibility to be reconsidered for an additional term (La Gaceta, 2015). In order to achieve broader acceptance of the Commission's work in civil society, the government might consider leaving the choice of civil society participants up to civil society organisations themselves.

The Commission holds meetings on a monthly basis and, in exceptional cases can call special sessions if desired by an absolute majority of the members (La Gaceta, 2015). The CNGA held its first meeting in August

2015, when it decided to make the agenda and decisions of the sessions open to the public (Abriendo Datos Costa Rica, 2015). At its second meeting in September 2015, the Commission agreed to structure Costa Rica's second OGP Action Plan around the topics of transparency and access to information, participation, and the fight against corruption (CNGA, 2015). The drafting process leading to the second OGP Action Plan was then also led by the CNGA. This reflects the Commission's decisive role in influencing the open government agenda in Costa Rica.

As will be discussed in greater detail in Chapter 3 of this Review, the creation of the Commission is an important step forward, as it provides the necessary high level leadership for Costa Rica's open government agenda. It creates a forum in which key stakeholders can define a common vision on open government for the country, as was also successfully done in the elaboration of the National Open Government Strategy (see Chapter 1). Under the previous administration, the Inter-Sectoral Commission for Digital Government (*Comisión Intersectorial de Gobierno Digital*) was responsible for open government policy co-ordination and for designing and planning public policies on digital government (which at that time also included open government matters). The Commission and its Secretariat, the Digital Government Technical Secretariat (see below) designed and implemented Costa Rica's first OGP Action Plan, which placed a strong emphasis on digital government and open data (see Chapter 3). The creation of the CNGA reflects the current administration's broader understanding of open government, including the areas of citizen participation, transparency, accountability, digital government and integrity/anti-corruption.

Executive institutions and their roles in the open government process

The Office of the Deputy Minister of the Presidency for Political Affairs and Citizen Dialogue in the Ministry of the Presidency – the Secretariat of the National Open Government Commission

The presidential transition in 2014 resulted in a major restructuring of the institutional framework for open government in Costa Rica. As discussed in greater detail in Chapter 3, open government policies are now mainly co-ordinated by the Ministry of the Presidency (*Ministerio de la Presidencia*), which also constitutes the Secretariat of the National Open Government Commission. Under the previous administration Costa Rica's open government agenda was led by the Digital Government Technical Secretariat, which was institutionally situated in the Costa Rican Electricity Institute (*Instituto Costarricense de Electricidad*, ICE). This restructuring is in line with the recommendations made by the OGP, different international

organisations and the case study on Costa Rica in the OECD's Regional Report on Open Government in Latin America (OECD, 2014a).

Within the Ministry of the Presidency, the Office of the Deputy Minister of the Presidency for Political Affairs and Citizen Dialogue is in charge of the horizontal and vertical co-ordination of the implementation of policies to make the government more inclusive and transparent (OECD and Inter-American Development Bank, 2015c: Survey Question 3). The Office's mandate further includes the development and implementation of open government initiatives, as well as the co-ordination and implementation of the dialogue with citizens. Moreover, it monitors the implementation and communicates passed reforms (OECD/IADB, 2015c: Survey Question 3.4).

Since it took on these responsibilities, the Ministry has been able to effectively advance Costa Rica's OGP and - to a lesser degree - the general open government agenda. Despite its relatively limited staff and financial resources (see also Chapter 3), the Ministry has managed to co-ordinate – on behalf of the CNGA - the elaboration of both the second OGP Action Plan and the National Open Government Strategy. It has further built up relationships of trust with other key actors from the central government and beyond. As a testimony to this, the Ministry has taken over the co-presidency of the OECD Network on Open and Innovative Government in Latin America and the Caribbean, and the successful initiation of a move towards an open state has been made in no small part thanks to the committed staff of the Deputy Ministry for Political Affairs and Citizen Dialogue.

The Ministry of National Planning and Economic Policy – The institution responsible for the National Development Plan and for the country's most advanced monitoring and evaluation system

The Ministry of National Planning and Economic Policy (MIDEPLAN), a member of the National Open Government Commission, is a key actor in the open government process. As an important Centre-of-Government institution (see Chapter 3), the Ministry is in charge of the implementation of the country's most important policy document, the National Development Plan, and has a great number of competences that can support Costa Rica's move towards an open state.

The Ministry's main functions are to provide technical and political advice to the President of the Republic and to public institutions as well as to formulate, co-ordinate, monitor and evaluate the strategies and priorities of the government. Its major tasks include preparing the National Development Plan (NDP) and ensuring that public investment projects undertaken by government bodies are in line with the major priorities set out

in the NDP (Articles 9 and 10, National Planning Act of Law 5525 of 1974) (OECD, 2015a).

Moreover, the Ministry has developed the country's most advanced monitoring and evaluation system. The National Planning Law (Law 5525 from 1974) gives the Ministry the task of systematically and constantly assessing the results of the execution of plans, policies and programmes (OECD, 2015a). Executive Decree 23323 from 1994, amended by Executive Decree 33206 from 2006, underlines MIDEPLAN's role in assessment and monitoring (OECD, 2015b).

Given that open government is a key strategic priority of the current government and that MIDEPLAN is in charge of formulating, co-ordinating, monitoring and evaluating strategies linked to the President's priorities, open government initiatives need the full involvement of MIDEPLAN to be effective and efficient. As discussed above, the CNGA is in charge of co-ordinating the move away from output-oriented monitoring and evaluation of Costa Rica's commitments under the OGP Action Plan, and it cannot fulfil this task without the support of MIDEPLAN. In the move toward a system of monitoring and evaluation focused on outcomes and impact (as opposed to outputs), MIDEPLAN has to play a key role.

The Digital Government Technical Secretariat – The former open government champion that should be reintegrated into the process

The Digital Government Technical Secretariat (*Secretaría de Gobierno Digital de Costa Rica*, DGTS) used to play a major role in Costa Rica's open government agenda. Executive Decree 33147 of 2006 established the institutional framework for digital government and the use of ICTs, creating the basic structure of the Digital Government Technical Secretariat of Costa Rica, which was incorporated into the Costa Rican Electricity Institute (*Instituto Costarricense de Electricidad*, ICE) by Decree 35139-MP-Mideplan in 2009. It further created the Inter-Sectoral Commission for Digital Government (*Comisión Intersectorial de Gobierno Digital*) "as a high level policy co-ordination and definition body in charge of designing and planning public policies on digital government matters", co-ordinated by the First Vice-Presidency of the Republic.

Despite its evident focus on the narrower issues of digital government and open data, the DGTS also used to be the country's key open government actor. The DGTS was in charge of the implementation of a great number of commitments under Costa Rica's first OGP Action Plan (see Chapter 3). Under the current administration the DGTS was integrated into *Radiografía Costarricense* (RACSA) and the role of "rector" of the sector responsible for digital government was given to the Ministry of Science, Technology

and Telecommunications. The government has announced that it will work on a bill that defines the model, organisational structure, functions, powers and organisation of a "strengthened technical secretariat", or a specialised agency (El Finaciero, 2015). If adopted, the law would also create the position of Chief Information Officer (CIO) within the new entity (ibid.).

In any case, the government should not leave the digital government agenda to the IT departments of the Ministries or to a highly specialised entity (see Box 2.6). It should make sure to include the institution(s) in charge of the country's digital government policies in the open state process. The responsibility for digital government could be moved to the Centre of Government for it to have a greater impact. This could, for instance, include giving it a seat on the National Open Government Commission in order to make sure that that digital government, a key component of open government, is fully integrated into the national OG agenda.

Box 2.6. **Parent Know How (United Kingdom)**

This award-winning project aims to get parents, particularly young fathers, more involved with the upbringing of their children. Developed between the UK Education Department and Digital Public, a private company, it uses third-sector service providers to develop a range of innovative digital services which provide information, advice and social networking. Services were developed in collaboration with young people and included: online messaging to access relationship support services; an online space to enable fathers to stay in touch with their children; a facilitated social networking space and counselling through Second Life, and a virtual parenting magazine; an interactive parent resource network for younger parents which includes customised services through chosen formats. Mobile phone-based technology combined with direct input from young parents themselves ensures service relevance and increases their ownership of the need to change, particularly fathers.

The technology is a means of building links and networks which provide the support needed to achieve ongoing change. To date, over 1 million parents have been involved and the cost per user interaction has been greatly reduced, compared with traditional services. Adding in user networks has meant that expensive professional services can be targeted where most needed. This is an example of ongoing input to service delivery.

Source: MCA (n.d.), "Parent Know How transforming outcomes for children for the Department of Children, Schools and Families", MCA Innovation Consultancy Case Study, Management Consultancies Association, London, www.mca.org.uk.

Attorney General's Office of the Republic and Public Ethics Attorney General's Office

In Costa Rica, the Attorney General's Office (*Procuraduría General de la República*) is the highest technical-legal body of the public administration (OECD, 2014). The Attorney General's Office is the legal advisor to the public administration and represents the state in the courts. It also acts as an advisory body to the Constitutional Court in cases of unconstitutionality and works as the notary of the public administration. To fulfil its functions, it enjoys administrative, functional and decision-making independence.

In 2002, Law No. 8242 added the Public Ethics Attorney General's Office (*Procuraduría de la Ética Pública*) to the office of the Attorney General in order to prevent, detect and eradicate corruption and to encourage ethical conduct and transparency in the public administration. The Public Ethics Attorney represents the country in the intergovernmental Monitoring Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC).

So far the Public Ethics Attorney General has only been involved in the open government process to a limited degree. The key Centre-of-Government institutions of Costa Rica, including the Ministry of the Presidency and MIDEPLAN, should consider closer co-operation with this institution in order to benefit from its extensive knowledge on fostering transparency and fighting corruption.

The Judiciary (Poder Judicial)

When it comes to openness and participation, Costa Rica's judiciary is one of the most advanced worldwide and it is among the first judicial branches in the world to have created its own open judiciary and citizen participation strategy. The judiciary is also involved in the country's OGP process, and the Presidents of the Supreme Court and of the Supreme Electoral Tribunal have signed the Declaration for the Establishment of an Open State.

In the framework of its fact-finding mission, the OECD had several meetings with the Costa Rican judiciary. Officials reported that the judiciary has started including open government principles in its daily activities. In doing so, it has the following stated objectives:

- bringing the Judiciary closer to citizens by incorporating electronic services

- promoting the exchange of digital information among different institutions to avoid unnecessary procedures and/or simplify procedures for citizens

- making justice accessible for the most vulnerable

- increasing transparency in managing justice

- publishing open data through public portals

- saving economic resources of citizens and the judicial branch.

This section briefly describes the organisation of the judicial system in Costa Rica, followed by an analysis of the Policy for Citizen Participation in the Judicial Power (*Política de Participación Ciudadana en el Poder Judicial)*. Subsequently, other measures taken in recent years to increase the openness, transparency and accountability of the judiciary in Costa Rica are examined. Finally, the section will contextualise the commitment to an open judiciary included in the second OGP Action Plan.

Performance of the Costa Rican Judiciary

In general, judicial independence in Costa Rica is relatively high, and the country has one of the continent's most accessible justice systems. Costa Rica's judicial sector was rated as the 38th most independent out of 142 countries by the World Economic Forum (2014). In 2013, 126 cases per 100 habitants were filed with the Judiciary (*Programa Estado de la Nación*, 2014a). When compared to its Central American neighbours, spending on the Judiciary per inhabitant is high (USD 133 in 2013 as compared to USD 38.9 in El Salvador, USD 28 in Panama and USD 15.1 in Guatemala) (*Programa Estado de la Nación*, 2014a).

According to the most recent figures of the *Latinobarómetro*, the performance rates of Costa Rica's judiciary are comparably good. In 2015, nearly half of the Costa Ricans (48%) who were asked indicated they perceived the judiciary to be working well (see Table 2.6) (*Latinobarómetro*, 2015). Costa Rica scored 17% better than the Latin American and Spanish average. Only 11% of the people surveyed in Costa Rica stated that the work of the Judiciary was very bad, in contrast to 18% in the region (ibid.).

Table 2.6. **How would you rate the performance of the Judiciary in Costa Rica?**

	2006	2007	2008	2015	Average in LAC in 2015[1]
Very good	5%	4%	2%	4%	3%
Good	44%	41%	39%	48%	31%
Bad	29%	26%	38%	28%	37%
Very bad	11%	21%	14%	11%	18%
No answer	3%	1%	1%	0%	1%
I do not know	9%	6%	5%	8%	9%

Notes: 1. Latin America and the Caribbean and Spain.

Source: *Latinobarómetro* (2015), "Evaluation of the Judiciary",
www.latinobarometro.org/latOnline.jsp.

While the positive scores in terms of performance (48% answered "good"), exceed the Latin American and Spanish average, 27% of the people answered to have only "some" trust in the institution, while 27% indicated that they "no trust" in the judiciary (see Table 2.7).

Table 2.7. **How much trust do you have in the Judiciary?**

	2006	2007	2008	2015	Average in LAC in 2015[1]
A lot	10%	11%	4%	**16%**	7%
Some	34%	31%	27%	**27%**	23%
Limited	37%	36%	45%	**26%**	35%
None	15%	19%	19%	**27%**	32%
No answer	1%	1%	1%	**0%**	1%
I do not know	2%	6%	4%	**3%**	3%

Notes: 1. Latin America and the Caribbean and Spain.

Source: *Latinobarómetro* (2015), "Evaluation of the Judiciary",
www.latinobarometro.org/latOnline.jsp.

The structure of the Costa Rican Judicial Branch

The judiciary's role is established in Articles 9 and 152 of the Constitution and the Organic Law of the Judicial Branch (Law 7333 from 1993). The judicial branch is independent according to the constitution. The judiciary is the branch of the state that takes final decisions regarding civil, criminal, juvenile criminal, commercial, labour and administrative matters and ensures law enforcement. In order to fulfil the fundamental objective of administering justice, the judicial branch established a structure divided into three different spheres: the jurisdictional, the auxiliary and the administrative.

The National Commission for Improving the Administration of Justice (CONAMAJ)

According to Decree 34798 from 2008, the National Commission for Improving the Administration of Justice (*Comisión Nacional para el Mejoramiento de la Administración de Justicia*, CONAMAJ) is a public body made up of representatives of the different branches of the Costa Rican state and of representatives of civil society. The Commission is composed of the following entities: the Judiciary, the Ministry of Justice and Peace, the Ombudsman, the Attorney General, the Faculty of Law of the University of Costa Rica, Bar Associations and Lawyers, the Legal Affairs Committee of the Legislative Assembly, the Comptroller General and the Supreme Electoral Tribunal. Hence, it includes representatives of the three branches of the state.

CONAMAJ works to strengthen the management system for the administration of justice in Costa Rica and to facilitate citizens' access to legal procedures. The commission is in charge of co-ordinating public entities involved in the pursuit of a harmonious and orderly development of the justice sector and the rule of law in Costa Rica. The Commission has among other things developed the following initiatives in recent years:

- inter-institutional co-ordination of justice representatives
- citizen participation in the administration of justice
- institutional policy for the access to justice for migrants and refugees.

CONAMAJ has further elaborated and is implementing a strategy to reform the administration of the judiciary in order to further citizen inclusion and transparency. The strategy is analysed in the section below.

Policy for Citizen Participation in the Judicial Power

The Costa Rican judiciary stands out as one of the only judicial branches in the world to have designed its own citizen participation policy. The judiciary defines citizen participation as "a democratic process, which guarantees a responsible, active and sustainable contribution of the citizens in the design, decision making and implementation of the policies of the judiciary, in a way which responds to the reality of the population, the common good and complies with the aims of the judiciary" (Judiciary, n.d.: 9). Citizen participation is seen as "a transparent intervention, regardless of any personal interests and policies, which includes the participation of different sectors of civil society in the open spaces of the

judiciary as forms of executing social control and transparency in the judicial function." (Judiciary, 2015: 9).

The judiciary's citizen participation policy aims at achieving the following goals:

- enhancing the legitimacy of the judiciary

- further strengthening trust in the democratic institutions of Costa Rica

- ensuring the application of the right of the citizens to obtain access to information

- includes citizens throughout the entire policy cycle

- making use of new technological advances in the ICT sector (ACCESA, 2015).

The policy for citizen participation represents an attempt to respond to a variety of challenges identified in the country (see Table 2.8).

Table 2.8. **Challenges for the Judiciary in Costa Rica**

Internal challenges	External challenges
1. The first internal challenge identified is the culture of the judiciary, which centres on holding onto power. This leads to the notion of the Judiciary as a detached institution from the main task of serving the people. Consequently, the judiciary is trying to foster the understanding of trustworthy service delivery, focused on citizens.	1. The Costa Rican population seems to have too limited awareness of the importance of active participation in political processes.
2. The Judiciary is organised in a vertical, centralised and complex way, with too few possibilities for citizen engagement. Thus, the judiciary should expand its network and the collaboration with CSOs and establish formal spaces for citizen engagement.	2. The Judiciary asserts that civic education is missing, since neither political parties, nor other institutions such as schools or the church have such programmes in place.
3. Some judges have expressed worries and doubts about introducing more mechanisms to engage citizens and hence improve accountability.	3. There seems to be a lack of organisations which direct their attention to citizen participation in judicial topics both at the national and at the regional level.
	4. The population of Costa Rica seems to lack a profound understanding of the organisational structure, judicial procedures and the services provided by the Judiciary.

Source: Judiciary (2015), "Política de Participación Ciudadana en el Poder Judicial",
www.conamaj.go.cr/images/libros/pdf/041.pdf.

The judiciary has worked out an **Action Plan to Strengthen Citizen Participation** in co-operation with CONAMAJ. The Plan (see Table 2.9)

contains three pillars with sub-commitments, similar to the OGP Action Plans analysed in Chapter 3.

The first pillar focuses on raising awareness of the judiciary's work among the population. The judiciary commits itself to "inform the citizens more and better about the services of the judiciary" (Judiciary, 2015: 37). This includes the responsiveness to citizen initiatives such as petitions and providing information on the organisational structure and accessibility of the different offices of the judiciary. The commitment also entails an acknowledgement which could serve as a sound summary of the Action Plan's aim: "The disclosure of accessible, inclusive and timely information creates trust and reduces the distance between the judiciary and the population".

The second commitment of the first pillar underlines the need to educate the population (including vulnerable groups) about their rights to actively participate in judicial processes. The third commitment focuses on raising awareness among people working in the judiciary about the rights of citizens to participate.

Pillar two emphasises the interaction and dialogue between citizens and the judiciary and includes four commitments:

- the establishment of a model of accountability directed towards the population and civil society organisations

- the expansion of formal spaces for interaction and strengthening of citizen participation in institutions that are already in place

- the holding of round-table discussions

- ensuring that information on the judicial system accessible to citizens so that they can participate more actively and exert their watchdog role.

The third pillar suggests four concrete approaches to the establishment of channels for a system of checks and balances:

- consolidation of viable models of citizen control

- encouragement of citizen participation in social audits

- creation of a Consultative Council of civil society and negotiation with authorities in the judiciary

- formalisation of spaces for representation of citizens in judicial cases.

Table 2.9. **Action Plan commitment of the Judiciary to strengthen citizen participation**

Pillar	Commitments	Proposed indicators and concrete actions
Creating consciousness and provision within the Judiciary and the population	Inform the citizens more and better about the services of the Judiciary	Availability of information on policies, regulations and agreements on the website of the Judiciary Number of judicial personnel which participated in capacity building and awareness raising courses on citizen participation Satisfaction of the population as determined by the survey of the Comptroller of Services
	Educate the population about their rights to actively participate in judicial processes	
	Raise awareness among judicial operators of the rights of citizens to execute their right to participate	
Dialogue between citizens and the Judiciary	Be accountable to citizens	Quantity of citizen initiatives which have generated change in the quality of services Quantity of consultations of the population in the course of new policies in the Judiciary, before their approval in the superior organs Quantity of consultations of the population on the budget of the Judiciary during the process of its elaboration Application of participative mechanisms for the election of citizen representatives for the Commission for the Access to Justice (*Comisión de Acceso a la Justicia*) and the specific Sub-Commissions Quantity of institutional initiatives directed towards creating an enabling environment for effective citizen participation of vulnerable groups of society
	Expand the formal spaces for interaction	
	Create round-table discussions	
	Make information of the judicial system accessible to the citizens	
Citizen advocacy	Consolidate viable models of citizen control	Quantity of round-table discussions and/ or citizen watchdog groups Quantity of arrangements presented by the population, which invoke the organs to take decisions Quantity and forms of participation of civil society in the Councils of Circuit Administration (*Consejos de Administración de Circuit*)
	Citizen participation in social audits	
	Create a Consultative Council of civil society and negotiation with authorities in the Judiciary	
	Formalisation of representation spaces for the citizens in judicial instances	

Source: Judiciary (2015), "Política de Participación Ciudadana en el Poder Judicial", www.conamaj.go.cr/images/libros/pdf/041.pdf.

Other measures taken by the Judiciary to advance openness, transparency and citizen participation

In addition to the Action Plan, CONAMAJ has introduced different reforms directed at tackling the external and internal challenges it identified. These initiatives include policies to foster the inclusion of vulnerable groups of the population, such as indigenous people, minors and disabled people (CONAMAJ et al., 2015a).

Moreover, as early as 2008 CONAMAJ developed a pilot programme on citizen participation in the region of *Huetar Norte*. The programme's main aim was to enhance democracy in the judiciary and bring the institution closer to the population (CONAMAJ, 2015). One year after its foundation, CONAMAJ published a report focused on the levels of citizen engagement and proposed concrete mechanisms for access to information, based on the lessons learned from a similar project in the Centre for Environmental and Natural Resource Rights (*Centro de Derecho Ambiental y de los Recursos Naturales*) (CONAMAJ, 2015).

The Plenary Court (*Corte Plena*) also signed a declaration to improve citizen participation in session 38-12 in November 2012. To this end, the judiciary elaborated the Strategic Plan (*Plan Estratégico*) for the Judiciary 2013-17 in collaboration with civil society and a number of representatives from other institutions, including MIDEPLAN, *Estado de la Nación*, the Digital Government Technical Secretariat, the Ministry of Finance (*Ministerio de Hacienda*) and representatives from Parliament. Within this Plan, citizen participation constitutes a decisive pillar, citizens were asked to participate in the plan's elaboration via social media, e-mail, workshops and fora.

These measures taken outside the Action Plan illustrate the judicial power's commitment to an Open Judiciary and the great potential of the judicial branch to contribute to the open state. Taken together, these promising initiatives could contribute to a single national Open Judiciary Policy of the judiciary.

Towards an open Judiciary in Costa Rica's second OGP Action Plan

The initiatives analysed above can be seen as integral elements of Costa Rica's efforts to diffuse open state policies across the different powers of the state. Moreover, Costa Rica is one of the first countries in Latin America to have integrated a commitment to a more inclusive, transparent and accountable judiciary into its second OGP Action Plan 2015-17.

In the OGP Action Plan, Costa Rica identified the current challenge as: "Judicial Power users are prevented from exercising the constitutional right

(and duty) of citizen participation, which results in insufficient participation in the management of the judiciary" (OGP, 2015). Costa Rica presents three approaches to addressing this challenge by the envisioned target year (2017). Accordingly, CONAMAJ as the responsible institution for the implementation is supposed to do the following:

- accompany the implementation of a strategy of outreach and communication on citizen participation

- accompany the dissemination and implementation of physical and virtual activities by the judicial power

- assist in the dissemination of the methodological guide for public participation designed by the judicial power (ibid.).

The incorporation of these three approaches into the country's second OGP Action Plan originates in the existing close co-operation between the judiciary and the Ministry of the Presidency and, in particular, the Office of the Deputy Minister for Citizen Dialogue and Political Affairs. Further joint projects between the Ministry of the Presidency or other ministries and the other branches of the state would add additional leverage to the country's open state agenda.

In a similar move, Colombia integrated the judiciary in its 2015-17 OGP Action Plan and aims at making information on judicial procedures, selection criteria for judges and rulings accessible to citizens (OGP, 2015). Following the examples of Colombia (see Box 2.7) and Costa Rica, other OGP members could consider making their judiciaries more inclusive, transparent and accountable by adding commitments to their next OGP Action Plans.

Box 2.7. **Colombia's commitment to an Open Judiciary**

In 2015, Colombia presented its Second OGP Action Plan, which includes 18 commitments. While some proposed actions such as "strengthening citizen participation" (Commitment 10) can be found in almost all Action Plans, Goal 16 provides a novelty for OGP Action Plans. In the period from 2015-17, Colombia commits itself to "transparency and accountability in the Council of State for better justice service". In previous Action Plans, Colombia and other countries in the region had expressed their commitment to enhancing transparency in state institutions, yet this case is different.

Together with the Supreme Court and the Constitutional Court, the Council of State (*Consejo del Estado*) is one of the most powerful legislative organs in Colombia. Consequently, its actions are powerful enough to create spillover effects to other institutions in the country. In the Action Plan, the Council declares the creation of the Commission of

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Box 2.7. **Colombia's commitment to an Open Judiciary** *(continued)*

Transparency and Accountability. Its purpose is "to provide better justice service to internal and external users through quality management in terms of effectiveness, efficiency and transparency." This ambitious aim is being carried out in the form of concrete approaches like publishing rulings of the day and making the choice of judicial candidates available to the public in an effort to tackle partisanship. It also aims at implementing the Inter-American Code of Judicial Ethics, as well as drafting the document "Accountability of the Judicial Branch". In sum, the multifaceted commitments of the Council of State provide examples of concrete initiatives in favour of transparency and accountability, which will contribute to earning further trust and legitimacy for the state's judicial branch among citizens.

Other OGP member states should consider the inclusion of their most powerful state institutions, not only in their future OGP Action Plans, but also in their national open government policies. Once implemented, this would constitute an important step for governments in their move move towards a transparent, accountable and inclusive state for the benefit of their citizens.

Source: OGP (2015a), "Colombia's 2015-2016 OGP Action Plan", Open Government Partnership, www.opengovpartnership.org/country/colombia/action-plan.

The Supreme Electoral Tribunal and its Training in Democracy unit – The promoter of a culture of open government in Costa Rica

The Supreme Electoral Tribunal was created by the Political Constitution of 1949 and enjoys great legitimacy among the population. The Electoral Code of 1953 provided the Court with the legal tools to organise, guide and oversee the electoral process. In 2009, Costa Rica introduced a new Electoral Code in order to strengthen democracy. In this 2009 Code, the Tribunal is tasked with promoting democratic values - a competence many other electoral bodies throughout Latin America already have (*Tribunal Supremo de Elecciones*, n.d. a).The Electoral Code further created the Institute for Training and Democracy Studies (*Instituto de Formación y Estudios en Democracias*) as part of the Supreme Electoral Tribunal.

The Institute has become an important promoter of Costa Rica's open government agenda. One of its key tasks is to build electoral and democratic capacity in the population. The Institute creates educational booklets and interactive materials and facilitates workshops in order to boost the capacities of groups and institutions for a life in democracy. The Institute collaborates with the Ministry of Education in programmes and projects related to civic education and the promotion of deliberative and participatory

democratic spaces. According to information received during the OECD Peer Review Mission, approximately 2 000 people participate in its capacity building workshops each year.

The Institute further participated in the elaboration of the OGP Action Plan, publishes data on voting behaviour in an open data format and is part of the Transparency Network created by the Ombudsman. A large part of the Institute's work on promoting democracy and transparency is directed at the subnational level and municipalities. For the municipal elections in 2016, the Institute designed an index (*Fichero completo*) with comparative indicators in order to "offer the population a summary of the current situation in the 81 cantons (…) (*Tribunal Supremo de Elecciones*, n.d. b)."

The Institute's work to provide access to information on democratic processes improves the enabling environment for open government in Costa Rica and contributes to the creation of a more active and engaged civil society.

The Legislative Branch: Moving towards an open legislature

The move towards an open legislative assembly in Costa Rica started with the publication in 2015 by the civil society organisation ACCESA of the Legislative Transparency Index, which evaluates the openness of the country's Parliament (ACCESA, 2015). According to ACCESA, following the publication of the Index, the Assembly approached the CSO in order to get support in becoming more open and transparent.

In order to promote the values of openness, transparency, accountability and citizen participation, ACCESA, five other civil society organisations and the *Autoridades del Diretorio Legislativo* set up the Alliance for an Open Legislative Assembly (*Alianza por una Asamblea Abierta*, AAA). In October 2015, the Legislative Board (*Directorio Legislativo*) signed an agreement including commitments to legislative openness and approved the implementation of a Plan of Priority Actions for Legislative Openness as a mechanism to promote, jointly with the AAA, an institutional policy of openness in the legislative assembly. The plan includes concrete commitments to:

- improve the Portal Legislativo
- create pedagogic material and offer capacity building to civil society
- expand the coverage of the legislature on television
- strengthen the mechanisms for participation in the legislative process to improve the relationship between civil society and members of Congress

- foster popular legislative initiatives

- promote the discussion of legislation on transparency and access to information in the legislative assembly.

The action plan establishes clear aims and includes deadlines, concrete indicators and defines the people responsible for their implementation. It is, however, too early to evaluate the actual impact of the plan.

The President of the Parliament further signed the "Declaration towards the Establishment of an Open State" and committed the legislative assembly to the inclusion of an action plan within its institutional strategic plan. The Office of the General Comptroller of the Republic Office (*Contraloría General de la República*).

The Office of the General Comptroller of the Republic Office is one of the oldest and most influential institutions in Costa Rica. It was established by the Constitution of 1949 as an auxiliary organ of the Legislative Assembly. As discussed in the OECD Public Governance Review of Costa Rica (2015a), the General Comptroller monitors the use of public funds and functions as a watchdog of the Public Treasury and as an organ of political control.

The General Comptroller oversees the ex-ante and ex-post control of institutional expenditures, budget approvals, reviews of contracts and the audits of public institution. Article 148 of the Constitution of the Republic defines its duties as:

- approving the budgets of decentralised bodies (68% of the total national budget), municipalities, autonomous institutions (e.g. universities), public companies and public funds managed by private parties

- auditing the execution and settlement of the Republic's ordinary and extraordinary budgets

- examining, approving or rejecting the budgets of the municipalities and autonomous entities and auditing their execution and settlement

- delivering a report on the financial flows corresponding to the preceding fiscal year on an annual basis to the Legislative Assembly, in its first ordinary session

- examining, annotating and closing the accounts of state institutions and public officers (OECD, 2015a).

In order to establish an enabling environment for accountable and transparent budgeting, the Comptroller General created the portal "Know

how your money is spent" (*Conozca en qué se gasta su dinero)* (see Box 2.8). The General Comptroller is also a member of the Inter-institutional Transparency Network (*Red Inter-institucional de Transparencia*) of the Ombudsman (see below).

Box 2.8. **Accountable and transparent budgeting:
The "*Conozca en qué se gasta su dinero*" platform**

The *Conozca en qué se gasta su dinero* initiative (Know how your money is spent) allows citizens to monitor public spending through the information provided on the website of the General Comptroller's Office. This initiative aims to increase citizens' engagement and social control of public expenditure while increasing public trust. The platform is fed with information from the Integrated System of Contractual Activity (*Sistema Integrado de la Actividad Contractual,* SIAC) and the Information System on Planning and Budget (*Sistema de Información sobre Planes y Presupuestos,* SIPP).

On the one hand, the SIAC is an automated system for recording and processing information of contractual activity undertaken by all public entities, with the purpose of providing information for management, control and supervision, as well as catering to the informational needs of the different national and international stakeholders. On the other hand, the SIPP provides information on budget planning and execution by the public bodies in charge of managing public funds.

By centralising information from these two information systems, the Costa Rican government was able to develop a user-friendly online tool providing information on the use of public funds. The main objective is to promote transparency in the use of public resources with an open approach. This tool was built with the idea of offering citizens useful, timely, easily accessible and accurate information by simplifying and easing the terminology and data already provided by the SIPP and the SIAC systems. Information can be also represented graphically for better understanding and interpretation of the data.

Source: Contraloría General de la República (n.d.), "Conozca en qué se gasta su dinero", www.cgr.go.cr/03-consultas/transparencia-presup-publicos.html (accessed 12 February 2016).

Independent state institutions

In addition to the three branches of the state, independent state institutions must take on important roles if open government policies are to be implemented successfully. They have a dual function, which includes proposing reforms and holding the government accountable. This section introduces key independent institutions and explains their respective relevance for Costa Rica's open state process.

Office of the Public Defender of the People of the Republic of Costa Rica (*Defensoría de los Habitantes de la República de Costa Rica*)

The traditional and principal role of the Ombudsman is to receive and investigate citizen complaints about abusive acts or decisions by the government (OECD, 2016). The duties and authority of the Offices of the Ombudsman vary tremendously across the different world regions and can include among other things the protection of human rights, access to information, anti-corruption and prevention of torture (see Box 2.9). In Latin America, where the Office is known as the *Defensoría de los Habitantes/del Pueblo*, differences between countries abound.

In Costa Rica, the Office of the Public Defender of the People of the Republic (*Defensoría de los Habitantes de la República)* was established by Law 7319 from 1992 after a legislative process started as far back as 1985 with the submission by the Executive Branch. It is responsible for the protection and interests of the population (OECD, 2015a). The Office mainly receives and investigates complaints and alleged cases of infringement of rights by state institutions or bodies. Moreover, it oversees:

- public sector compliance with moral principles

- the application of the rule of law

- the Political Constitution

- legislation (laws, agreements, treaties and pacts entered into by the government)

- general principles of law

Box 2.9. **Categories of Ombudsman institutions/offices**

Classical Ombudsman

The classical function of an Ombudsman Institution (OI) is to investigate complaints against the public administration, make recommendations on actions to be taken by the administration, and try to get these recommendations adopted. OIs following the classical model often have extensive powers to investigate cases submitted to them. They may work towards mediation of conflicts, but if no solution can be reached, they provide recommendations to the relevant administrative unit. The classical OI has no power of coercion and can only employ "soft" pressure to get its recommendations adopted. The OI submits an annual activity report to the parliament to draw the latter's attention to remedied grievances.

Classical OIs are common in Western Europe and some of the Commonwealth countries. Examples include Belgium, Bulgaria, Denmark, Ireland, Iceland, Israel, the Netherlands, Norway, the United Kingdom, and Australia.

Box 2.9. **Categories of Ombudsman institutions/offices** *(continued)*

In recent years, OIs with an extended legal mandate to get their recommendations adopted have started to appear. The legal powers vary between countries and may include the powers to: appeal to courts, participate in court proceedings, file applications in administrative proceedings, propose legislative amendments, and recommend disciplinary or criminal proceedings. The classical OI with extended legal powers can be found in all regions of the world, especially among younger institutions. These countries include Croatia, Estonia, Poland, Portugal, Spain, Kazakhstan, Papua New Guinea, Botswana, and Ethiopia.

Human rights Ombudsman

OIs in this category have a specific mandate to look into the observance of human rights. In some cases, the OI is restricted only to the handling of human rights issues, while in other cases, the human rights function is added to the classic mandate. The tasks of a human rights OI often include: filing of human rights violations, educating and informing the public on human rights, reporting on the general human rights situation in the country, conducting research and analysis on human rights, and monitoring the implementation of human rights within the country.

Human rights OIs are particularly common in Eastern Europe, Central Asia and Latin America. Examples of countries include all Latin American countries, Albania, Armenia, Hungary, Kyrgyzstan, Papa New Guinea, Taipei China, and Tanzania. In Colombia, El Salvador, Venezuela, Bolivia, Azerbaijan, Georgia, and Uzbekistan, the OI is restricted to only human rights issues.

Anti-corruption Ombudsman

OIs in this category have a specific mandate to curb corruption. These often operate as a combined OI and anti-corruption agency. Their specific functions may include overseeing the conduct of senior public officials, collecting and reviewing assets and income declarations, investigating instances of alleged or suspected corruption, and educating and informing the public regarding issues related to corruption.

Anti-corruption OIs are mostly found in Asia and Africa. Country examples include South Korea, Papua New Guinea, Taipei, China, Vanuatu, Rwanda, Gambia, and Ghana.

Auditing Ombudsman

A few OIs have a specific auditing mandate, which gives them the power to oversee government bodies and/or conduct audits of the administrative practices and procedures of government bodies, irrespective of whether they have received an individual complaint. OIs with an auditing mandate can be found among the Australian regional ombudsman institutions and in Ethiopia.

Source: World Bank (n.d.), "Differences Between Ombudsman Institutions", World Bank, web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTPUBLICSECTORANDGOVERNANCE/0,,contentMDK:23543235~pagePK:148956~piPK:216618~theSitePK:286305,00.html.

Apart from the daily tasks of collecting and investigating appeals from the population, which provide the office with an in-depth understanding of the systemic problems in Costa Rica's public administration, the Office of the Costa Rican Ombudsman has started the following initiatives to promote transparency:

- preparation of a Public Sector Transparency Index (*Índice de Transparencia del Sector Público)* with 186 participating institutions, which gathers together all information available on the institutions' websites, including public procurement panning, a salary index, contracts of public workers, tenders, annual reports, minutes, agreements and circulars etc.

- involvement in the drafting of the National Open Government Strategy, published in 2015 and discussed in detail below

- establishment of the Inter-institutional Transparency Network (*Red Interinstitucional de Transparencia)*.

The Ombudsman's traditional role as the guardian of public interest and its ability to intervene in the problems that citizens encounter in their interaction with the public administration places it in a favourable position to promote open government. As discussed in the OECD Public Governance Review of Peru (forthcoming), Ombudsmen provide transparency about government action and misconduct and can channel citizens' voices into the policy-making process. In addition, Ombudsmen promote a pattern of engagement that is aimed at building consensus, as their working method relies on finding amicable solutions.

In Costa Rica and several other countries like Peru and Morocco taking part in the Open Government Partnership (OGP), Ombudsman Offices are now also involved the open government activities of their countries' governments, . The Ombudsman is in fact well-placed to contribute to the drafting, implementation and monitoring of OGP Action Plans (Tyndall, 2014). It can contribute to enhance access to information, by acting as a guardian of the law or proactively promoting this right and overseeing its implementation, as the Costa Rican and Peruvian Ombudsmen are doing.

The Moroccan Ombudsman is currently exploring opportunities to work directly with civil society to enhance integrity in the country. In order to thoroughly map these different opportunities for Ombudsman institutions to contribute to open government, the OECD is currently undertaking a stocktaking exercise on the matter, as explained in Box 2.10.

Box 2.10. **The OECD Comparative Study on Ombudsman Institutions**

In 2015 the OECD launched a project to investigate the role of Ombudsmen in OECD countries and beyond, together with the Association of Francophone Ombudsmen and Mediators (AOMF) and the Mediterranean Association of Ombudsmen (AOM). The objectives of the project are to help their member countries promote a public sector that provides quality services to their citizens, to create favourable conditions for inclusive growth, and to re-establish the trust of citizens in the public administration.

Ombudsmen occupy a special place in the governance system. They work for the respect of rule of law, good administration, and the principles of administrative justice. Because of their regular contact with the public administration and citizens, they are in an ideal position to uncover systemic problems and promote public governance reform, to engage citizens in this process, and to offer them an alternative dispute resolution mechanism in their conflicts with the public administration. The project will undertake an in-depth analysis of the current role Ombudsmen play in open government reforms and alternative dispute resolution, in order to identify good practices and to provide recommendations to strengthen this role.

Source: Author's own work.

Academia and civil society

This section presents some of the most influential representatives from Costa Rica's academia and civil society, though it is acknowledged that this elaboration is not exhaustive, due to a great variety of academic institutions and CSOs which are active in the country.

The National Council of Rectors: Academia's voice in the open government process

The National Council of University Presidents (*Consejo Nacional de Rectores*, CONARE) provides the academy's input to the open government agenda of Costa Rica. It was founded in 1974 and in 1977 it became a legal entity under Law 6162. CONARE sends a representative to the meetings of the National Open Government Commission, in which it actively participates. CONARE is also a member of the Inter-institutional Network of Transparency of the Ombudsman (CONARE, n.d.).

Given its independence, CONARE could play an important role in spreading the knowledge about open government gained in the executive to the two other branches of power.

The Programme State of the Nation providing the evidence base for open government policy making

The State of the Nation Programme (*Programa Estado de la Nación*) is Costa Rica's most important independent research institute. It seeks to improve the access to comprehensive, timely and truthful information in the country and publishes reports such as the "State of the Nation" (*Estado de la Nación*), "State of the Region" (*Estado de la Region*), "State of Education" (*Estado de la Educación*), "State of Science, Technology and Innovation" (*Estado de la Ciencia, la Technología y la Innovación*) as well as the "State of Justice" (*Estado de la Justicia*), many of which include sections with great relevance to Costa Rica's open government agenda.

The State of the Nation report is elaborated together with CONARE and the Ombudsman and evaluates national performance in sustainable human development. The Programme receives support from the United Nations Development Programme (UNDP), the Ombudsman and the four state universities.

Yo Soy Gobierno Abierto/Abriendo Datos

The initiative *Yo Soy Gobierno Abierto/Abriendo Datos de Costa Rica* was founded by various civil society organisations in order to include the priorities of the public opinion in the process of the second OGP Action Plan (2015-17). This initiative was economically supported by *Hivos*, an international development organisation. It also boasted the participation of *Estudios Manatí*, a group of young people that design modern websites.

Yo soy gobierno abierto played a key role in the elaboration of the second OGP Action Plan. It facilitated consultation sessions at the local level in different municipalities (for more information about the drafting process of the second OGP Action Plan and for the local level's involvement in it, see Chapters 3 and 4).

Centro Ciudadano de Estudios para una Sociedad Abierta (ACCESA)

ACCESA is one of the most influential CSOs in Costa Rica and, as discussed above, is currently offering guidance to the Parliament within the framework of the Alliance for an Open Legislative Assembly (*Alianza por una Asamblea Abierta*, AAA) (ACCESA, n.d.). The CSO was established by citizens that work to pursue the goals of transparency and access to information in matters of public interest and accountability in all state decision-making processes (ibid.).

ACCESA's most visible projects include the collaborative platform for local politics called "Your local representatives" (*Tus Representantes*

Locales) and the online platform "For my District" (*Por mi Barrio*) which allows citizens to report damage, vandalism and other problems in cities.

Costa Rica Íntegra

As one of the two representatives of civil society in the CNGA, the CSO *Costa Rica Íntegra* is able to shape the open government agenda of Costa Rica. The CSO is the national representative of the internationally recognised civil society organisation "Transparency International". In this role, it collects data for the Global Corruption Perception Index, in which Transparency International ranked Costa Rica 47th out of 175 countries in 2014.

Moreover, Costa Rica Íntegra forms part of the Alliance for an Open Legislative Assembly (*Alianza por una Asamblea Abierta*, AAA) and works towards raising awareness among political parties of the need for more transparency in the Legislative Assembly.

Citizen Network for Open Government (Red Ciudadana por un Gobierno Abierto)

The participatory Citizen Network for Open Government (*Red Ciudadana por un Gobierno Abierto, RedC*) is made up of various CSOs, and while they may have different backgrounds, they all share the objective of enhancing citizen participation in Costa Rica (RedC, n.d.). The aim of the Network is to "constitute a permanent and sustainable platform for the dissemination of information, definition, positioning, implementation and monitoring of the issues of transparency, access to information and corruption" (ibid.). The Network was founded in June 2013 and is open to all organisations, collectives or individuals interested in, adhering to and supporting the principles of open government. Currently, the Network consists of the following Organisations:

- Collective for Digital Rights (*Colectivo Costarricense por los Derechos Digitales)*
- *Coope SoliDar R.L.*
- *Costa Rica Íntegra*
- *Fundación Acceso*
- *Indignados CR/Vox Populi*
- Network of Citizen Control (*Red de Control Ciudadano*)
- *Ticoblogger*

- Individuals from the Citizen Block *(Bloque Ciudadano)*

Recommendations

In order to further improve the legal and institutional enabling environment for the open state, the Review recommends that Costa Rica:

- Pass an Access to Information Law, ensuring that it is applicable to the whole public sector including the institutionally decentralised sector (e.g. semiautonomous and autonomous bodies). The right to access government information is a necessary legal foundation for transparency, accountability and citizen participation in policy making (OECD, 2014). It is the cornerstone of an open and inclusive government. Access to public information is crucial to efforts to increase accountability, contribute to the reduction of corruption and deepen trust between citizens and their governments. Furthermore, access to public information allows citizens to better understand the role of the governments and the decisions made on their behalf; hold governments accountable for their decisions and policies; and choose their representatives more effectively. Costa Rica currently does not have an Access to Information Law, and while the draft version from 2014 assessed in the Review is generally in line with OECD practices, it only applies to those institutions that depend on the central government.

    - The law must contain at least the following elements:

        - objectives and principles

        - scope

        - proactive disclosure including what information to publish, where the information must be published and how (in what format) the information should be published

        - the procedure used to request information (how and where to request information, information included in the request, the timeframe to provide a response to the request, fees, sanctions applied to public officials for who fail to provide information)

        - exemptions (clearly specify the exceptions and the justification process)

        - appeals procedures.

- **Each institution could designate one or more public officials to be in charge of providing information** (information officers), who will need regular training and to have their capacities strengthened to meet the challenges of dealing with requests to access information.

- **The country should develop policies or guidelines for the classification and declassification of information** to guide public officials in their interpretation and decision as to what information can be or cannot be provided.

- **There should be a call to establish an Information Commission**/entity to be in charge of promoting the effective implementation of the ATI.

- Carry out awareness campaigns to disseminate the importance of access to information as a pillar of Open government among civil society and public officials.

- Continue the move towards bridging the gap between the country's access to information and open data agendas by including explicit references to open data in the Access to Information Law.

- **In accordance with good practices in Latin American, consider giving the responsibility to ensure the proper implementation of the Law on Access to Information - once passed – to the Ombudsman's Office**. Additional human- and financial resources may be needed for this institution to successfully perform the task.

- **Draft a law on citizen participation to enhance the quantity and quality of engagement opportunities provided**. The various constitutional provisions foreseen in this area do not seem to be sufficient to establish an effective degree of participation of all relevant stakeholders in the policy cycle. Formal opportunities defined by the Constitution and by law, such as referenda and popular initiatives, appear not to have achieved the intended effect and to be often underutilised. Despite these challenges, Costa Rica has managed to create various informal mechanisms to ensure citizen involvement in public affairs, such as ad hoc or permanent mechanisms, which are not necessarily codified by law, but have been used extensively by citizens to influence decision-making processes not only at the national but also at the local level. By unifying all formal and informal participation mechanisms under the umbrella of a single legal instrument, as done for example by the

Government of Colombia, Costa Rica will increase their use and maximise their impact.

- Consider including the **elaboration of a whistle-blower protection law** as part of the next OGP Action Plan.

- **Consider creating a national network of civil society organisations focused on open government** in order to increase the number of stakeholders participating in the Open Government National Commission, thus improving its inclusiveness and representativeness. The network could also play a key role in promoting open government principles and practices at the local level.

- **Consider creating an Open State Commission** with the representatives of the four powers with the aim of promoting the implementation of an open state through concrete actions. Due to the key role played by the office of the Ombudsman, Costa Rica could consider its inclusion in the Commission.

- **Consider expanding the reach of the National Open Government Commission,** ensuring that all relevant actors included in it, including the Digital Government Technical Secretariat and subnational representatives (see also Chapter 3).

  – In order to garner greater acceptance of the Commission's work, the government could consider leaving the choice of **civil society participants** up to civil society organisations themselves.

- **Make sure to include the institution(s) in charge of the country's digital government policies in the open state process**.

  – This could for instance include giving this entity a seat on the National Open Government Commission in order to make sure that that digital government, a key component of open government, is fully integrated in the national OG agenda.

Notes

1. See http://right2info.org/access-to-information-laws#section-3.

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Chapter 3

Open government leadership and co-ordination from the Centre of Government in Costa Rica

This chapter examines the co-ordination and leadership exercised by the Ministry of the Presidency, the Ministry of Planning and Economic Policy, and the Ministry of Finance, the main Centre-of-Government (CoG) stakeholders responsible for the implementation of open government policies in Costa Rica. It benchmarks the leadership and steering capacity of Costa Rica's CoG against OECD countries and discusses the most important characteristics of a successful horizontal and vertical policy co-ordination of open government policies. In order to ensure that the ambitious National Open Government Strategy is successfully implemented, the chapter recommends institutionalising the inter-institutional contact points and creating a system for monitoring and evaluating both the National Strategy and the OGP Action Plan. The chapter further argues that the CoG can only fulfil its ambitious mandate to lead Costa Rica towards an open state when equipped with adequate human and financial resources.

Introduction

The OECD defines the Centre of Government (CoG) as the institutions that provide direct support and advice to the head of government and the Council of Ministers (OECD, 2015a). In general, the CoG has three core roles: 1) supporting quality decision making by the head of government; 2) co-ordinating across government; and 3) monitoring the implementation of government policy (OECD, 2015a). As discussed in the OECD Public Governance Review, in Costa Rica, the key CoG actors are the Presidency of the Republic and its strategic partners, which are the Ministry of Finance, the Budgetary Authority and the Ministry of Planning.

Experience from OECD countries shows that the role of the CoG in providing leadership and effectively and efficiently co-ordinating open government policy making and implementation is critical in operationalising the abovementioned framework conditions. As discussed in detail in the case study on Open Government Policies and Practices in Costa Rica that was included in the OECD Report on Open Government in Latin America (OECD, 2014a), until 2014, the responsibility for the co-ordination of the national open government agenda was institutionally located in the Digital Government Technical Secretariat (*Secretaria Técnica de Gobierno Digital*), which was then placed in the Costa Rican Electricity Institute (*Instituto Costarricense de* Electricidad, ICE) and, hence, outside of the Centre of Government. This situation changed under the new administration, which identified open government and citizen participation amongst its top policy priorities. Reflecting this new focus, the responsibility for open government shifted from the Digital Government Technical Secretariat to the Office of the Deputy Minister for Citizen Dialogue in the Ministry of the Presidency of the Republic. This decision aligned Costa Rica with the majority of OECD countries, in which open government policies are steered by the CoG (OECD, forthcoming).

The great number of stakeholders involved in the design and implementation of OG policies – ranging from central government and local governments to civil society, academia and the private sector – requires action on a broad, horizontal and whole-of-government scale. Accordingly, in the implementation of open government policies, CoG actors have to mobilise and ensure the collaboration of several line ministries as well as external actors. The CoG's success depends not only on its formal powers but also on its capacity to lead and motivate all relevant actors (OECD, 2015a).

This chapter analyses how the Costa Rican CoG institutions tackle the challenge of implementing open government reforms. It builds on the OECD Public Governance Review (PGR) of Costa Rica (OECD, 2015a),

which includes an assessment of the role and functioning of the CoG and provides recommendations to strengthen it (OECD, 2015a), on the answers Costa Rica provided to the OECD Survey on Open Government and Citizen Participation in the Policy Cycle and on the results of the peer review missions the OECD conducted in the country with the support of public officials from Mexico and Brazil.

The current administration has taken important steps forward

The open government principles of transparency, accountability and citizen participation are enshrined in the Statute of the governing *Partido Acción Ciudadana*. Article 8 of the Statute defines that "in the internal functioning of the organisation and the public acts of its officials and representatives, the Party commits itself to the effective application of the principles of transparency and timely accountability to the citizens as effective means to ensure the ethical exercising of public service" (PAC, n.d.). The Statute moreover devotes an entire article to citizen participation. Article 10 lays down that: "The Party will defend the institutions of the Republic, which are based on the principles of democratic representation, and foster new forms of democratic participation through the strengthening of communal and municipal powers. It will promote mechanisms for civil society so that, in accordance with the law, new areas are created to provide direct support by the citizens who monitor the work of the government, the institutions and the civil servants, in order to work towards a more efficient use of national and local resources" (ibid.).

In line with these political priorities and recognising the transversal nature of open government policies, the current administration transferred the responsibility for the country's open government agenda to the CoG, namely to the Deputy Ministry for Citizen Dialogue of the Presidency of the Republic, in 2014. Moreover, in order to ensure proper horizontal co-ordination across government and with civil society, it created the National Open Government Commission (*Comisión Nacional de Gobierno Abierto*, CNGA) by decree N° 38994-MP-PLAN-MICITT in 2015. Since its creation, the CNGA has elaborated an innovative Open Government National Strategy and *Enlaces Institucionales*¸ or open government contact points, were created in many public institutions.

This section discusses the important achievements that the Costa Rican CoG has made in advancing the administration's ambitious open government agenda in the past two years and identies further opportunities to strengthen the leadership and co-ordination functions of the CoG in order to improve the overall impact of its open government and open state agenda.

From policy to implementation: The important role of the CoG for a successful open government policy cycle

The 2015 Public Governance Review of Costa Rica and other relevant OECD publications (see Box 3.1) provide a description of the OECD's theoretical framework for the CoG. This chapter elaborates on the importance of CoG co-ordination and leadership for the Costa Rican open government policy cycle.

Open government policies are considered by OECD countries as critical for the achievement of a number of different policy outcomes in various areas of public sector administration (e.g. transparency, accountability, integrity, fighting against corruption, public sector reform and public service delivery). In order to strengthen and focus their open government efforts, all governments in the OECD have adopted specific policies and/or plans aimed at better co-ordinating the multiplicity of stakeholders involved in planning and implementing the various existing initiatives in these areas (OECD, forthcoming). The experience of OECD countries has shown that identifying an institution or an office within the CoG to be in charge of open government leadership and co-ordination is a pre-condition for the successful implementation of open government policies. The OECD Survey on Open Government and Citizen Participation in the Policy Cycle ("the OECD Survey") shows that – like Costa Rica – most OECD countries have an office that is responsible for open government policy co-ordination (see Figure 3.1).

Figure 3.1. **Is there an office responsible for horizontal co-ordination of open government initiatives?**
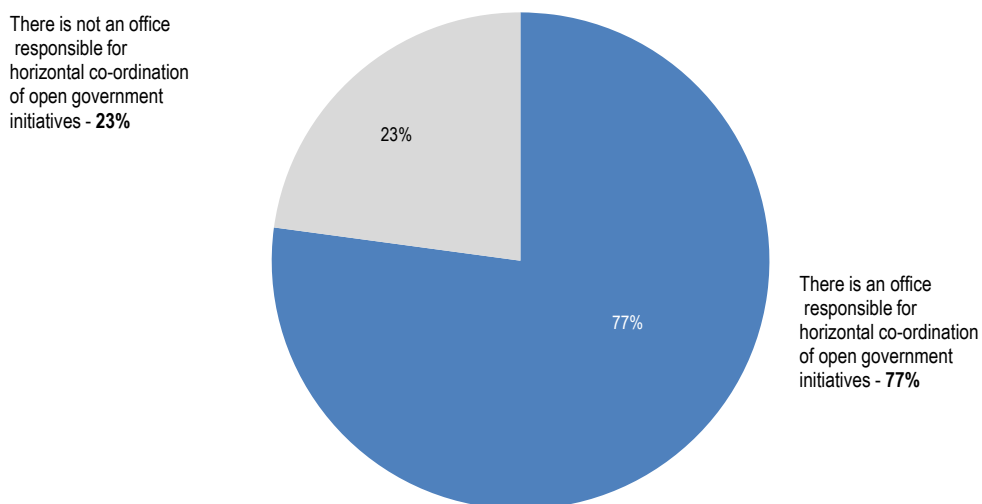
There is not an office responsible for horizontal co-ordination of open government initiatives - **23%**

23%

77%

There is an office responsible for horizontal co-ordination of open government initiatives - **77%**

Source: OECD (forthcoming), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris.

Situating the responsibility for open government within the CoG can be considered a good practice for several reasons:

- Open government policies and practices are both a strategic objective in themselves and a cluster of essential values and instruments that can effectively help the CoG to better advance its vision and achieve results together with citizens, civil society and the business community. In addition to specific policy actions, open government principles apply to the **very functioning of the public sector** as a whole. In particular, the implementation of reforms aimed at promoting more open and participatory policy making and service design and delivery have the potential to transform deeply the way in which public officials perform their duties in all the domains of the state. For instance, countries should promote the implementation of their open government initiatives through HRM policies. These ideas are also reflected in the concept of "Government as a Platform", in which "government is a convener and an enabler rather than the first mover of civic action" and in which open government has a key role to play (O'Reilly, 2011).

Given its central position and its core responsibilities, the CoG is well placed to lead and co-ordinate countries' open government transformation processes.

- The new role the CoG is playing across OECD countries and its increasing **focus on delivery** (in addition to oversight functions) matches the needs of multi-sector and multi-stakeholder open government policies. Policy making in OECD countries has become more complex, due to, among other things, the economic inter-dependency of countries, the recent economic and financial crisis, as well as more diverse and mobile societies (OECD, 2015a). Across the OECD, the CoG now plays a more prominent role during the entire policy cycle, from helping to shape the government's guiding political vision to monitoring progress and working with departments to solve delivery problems (OECD, 2015b).

Box 3.1. **Centre of Government: Delivering on complex agendas**

At the 2015 meeting of the OECD Network of Senior Officials from Centres of Government, participants reflected on key aspects to further strengthen the CoG's capacity to deliver on complex agendas:

- The importance of setting clear goals and objectives from the outset and welcoming the trend towards more focused government programmes structured around fewer but more strategic priorities.

- The relevance of efforts to reduce the number of participants around the table; while formal cabinet or government-wide deliberation and decision making remain important, priority initiatives can be more effectively driven by smaller ministerial teams.

- The common agenda should, where possible, be built around high-profile outcomes that offer tangible rewards in terms of business or citizen impact for participating ministries.

- Citizen input can be leveraged to generate momentum and overcome resistance either within government or from other vested interests; for that purpose, the CoG needs to better communicate to citizens the goals of priority initiatives, particularly those with longer-term impacts.

- Mastering knowledge and evidence is crucial to many different aspects of the CoG's work; clear objectives need to be set at the planning stage, and without realistic and agreed objectives, targets are meaningless and can waste effort and drain enthusiasm.

- A particular challenge is related to the translation of data collected at national level into usable advice for subnational governments, which are often the principal providers of public services, and to maintaining evidence systems that provide the right data at the right time.

> Box 3.1. **Centre of Government – delivering on complex agendas** *(continued)*
>
> - To be effective, the CoG needs to have a good understanding of the "organigram" of delivery – in other words, the relationships that have an impact on the delivery of policies and how the CoG supports these relationships – at the same time, the CoG needs to explore how to facilitate leadership by specialist line ministries so that the CoG is not the default option and to ensure that key policies are not "orphaned" or dumped at the CoG level.
>
> *Source*: OECD (2015b), "Meeting summary - 2015 meeting in Helsinki (Finland) of the OECD Network of Senior Officials from Centres of Government on promoting inclusive growth: A new challenge for the Centre of Government", www.oecd.org/gov/cog.htm.

- Being multi-sector and multi-stakeholder by definition, open government policies need a whole-of-government/whole-of-society approach to be effective and have the desired impact. This requires **coherent steering and co-ordination within the policy cycle**. CoG institutions are well placed to provide the leadership required for this kind of approach. Open government agendas benefit from an effective, dynamic and implementation-oriented CoG that ensures their overall internal coherence and their full alignment with national public sector reform objectives.

Figure 3.2. **Focus of the Centre of Government: Primary focus of the Centre of Government**
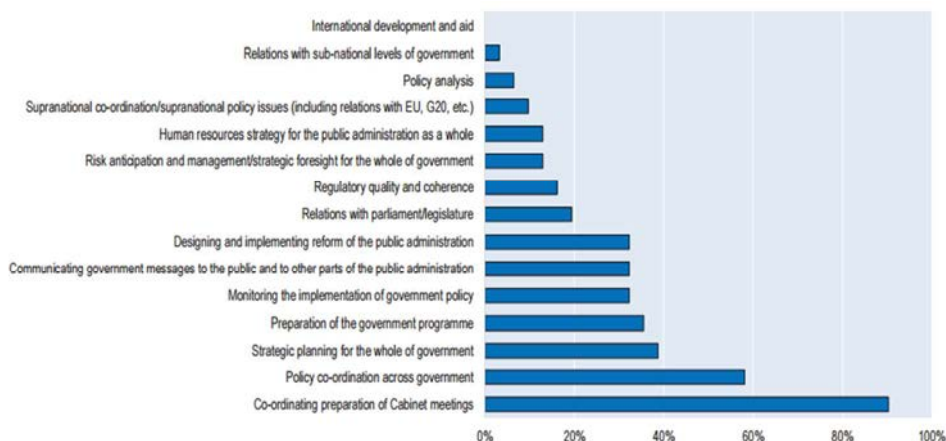
Source: OECD (2014b), "Centre stage: Driving better policies from the centre of government", GOV/PGC/MPM(2014)3/FINAL, OECD, Paris, www.oecd.org/gov/Centre-Stage-Report.pdf.

Three elements are crucial for an efficient and effective CoG-led implementation of national open government agendas:

1. In order for implementation to be successful and sustainable in the long term, the CoG must have the necessary **institutions and mechanisms**. This ensures that its qualities and functions are properly operationalised.

2. The CoG institution(s) in charge of open government policies must have strong **leadership and vision-setting** capacities. This includes having the capacity to ensure the elaboration of a country's distinctive vision of open government and its translation into policies and practices that are horizontally and vertically coherent, integrated and mutually supportive, with the ability to activate high-level political support and the capacity to mobilise the necessary human and financial resources.

3. CoG institutions must further have the ability and be recognised as performing the related function of successfully **co-ordinating** whole-of-government (or whole-of-state) open government efforts horizontally and vertically (across levels of government), as well as outside of government (i.e. with civil society and the private sector). Open government policies and initiatives require and promote institutional collaboration, one of the core functions of the CoG across the OECD.

The following sections will take these three elements as a basis for the analysis of Costa Rica's CoG framework for open government.

Institutional frameworks for open government in the Costa Rican CoG

The institutional and governance frameworks established to support the drafting and implementation of open government policies are the basis to secure leadership, co-ordination, the participation of all relevant stakeholders and ultimately successful impacts (OECD, 2014a). In order to guarantee the successful implementation of open government policies in the medium and long term and to create sustainability across political cycles, the institutions in charge of leading and co-ordinating a country's open government agenda must be stable and have the necessary institutional capacity to carry out the agenda over time.

In order to support the implementation of open government policies, the following elements should be present:

a) a central government institution in charge of open government

b) an Open Government Steering Committee comprising public officials as well as representatives of civil society

c) mechanisms of monitoring and evaluation.

a) A central government institution in charge of open government: the Deputy Ministry for Political Affairs and Citizen Dialogue in the Ministry of the Presidency of Costa Rica

Governance models vary widely between countries, but OECD experience shows that having a central government body in charge of open government policy setting and co-ordination – supported by additional units if necessary – facilitates delivery of results (OECD, 2014a). As described above, institutionally situating this actor in the CoG can ensure high-level leadership and effective policy co-ordination.

The key CoG actor in charge of Costa Rica's open government policies is the Deputy Ministry for Political Affairs and Citizen Dialogue within the Presidency of the Republic (see Chapter 2 for a detailed description of its responsibilities). While the responsibility for open government has belonged to the Deputy Ministry for only less than two years, findings from the OECD Peer Review missions indicate that the Deputy Ministry has been quite successful in aligning the country's open government efforts to its national development plan and building well-functioning working relations with other key players from the government and beyond.

The long-term sustainability and continuity of efforts are affected by the capacity in terms of the skills, human resources and financial means of the main office in charge of open government. In its responses to the OECD Survey, the Costa Rican government acknowledged that it faces capacity constraints in implementing its open government agenda, both financially and in terms skills and of human resources. While the Deputy Ministry's staff has done an important job in mainstreaming open government in Costa Rica, considering the relevance that open government policies have for the country, the government should consider giving the Deputy Ministry more human and financial resources to accomplish its tasks even more successfully and to exploit the full potential of the high-level institutional anchorage of open government policies.

b) An Open Government Steering Committee comprising public officials as well as representatives of civil society: the National Open Government Commission

Through its various Open Government Reviews, the OECD has gathered evidence that specialised open government steering committees are the most

effective way to bring together all relevant representatives from the CoG and the wider government (central and local), CSOs and the private sector and jointly work on a national open government agenda. However, for an open government committee to work effectively and efficiently, certain minimum conditions must be met:

- The committee should be attached to a CoG institution and have the right mandate.

- Sufficient human and financial resources should be foreseen and provided to ensure its functioning.

- All relevant stakeholders have to be included (from both the public sector and civil society).

- Transparent procedures as well as reporting and evaluation mechanisms must be established to ensure accountability on results.

The National Open Government Commission (CNGA), which has the mandate to co-ordinate and monitor the implementation of the country's open government agenda, is Costa Rica's Open Government Steering Committee. The composition of the Commission is in accordance with the compositions of similar commissions in other countries. However, as discussed in Chapter 2, the inclusiveness of Costa Rica's CNGA could be further increased by including representatives from local governments, more civil society organisations and the leader of the country's digital government agenda. Moreover, the government could consider creating an Open State Commission including the Legislature and the Judiciary to continue the path towards an open state.

As a Committee that meets only once a month, the CNGA's capacity to *implement* the national open government agenda is limited. In the implementation of its initiatives, the CNGA is assisted by the Ministry of the Presidency, or more specifically, the Deputy Ministry for Political Affairs and Citizen Dialogue (DMCD), which works as its *Secretariat* and is supposed to facilitate human resources for the adequate functioning of both the CNGA its sub-commissions (Art. 10 of Decree 38994) – a job it has fulfilled successfully over recent months despite having limited financial capacities and a small staff. As recommended above, Costa Rica should consider giving the DMCD more resources for it to handle its broad portfolio and adequately serve the CNGA.

While the President's direct involvement in the CNGA and the inclusion of open government as a key pillar in the NDP are a testimony of the existing high-level political support for the country's open government agenda, the fact that the National Open Government Commission has been

established by decree makes it vulnerable to changes of government and related policy priorities. It is recommended that the government ensure continuity by creating a more stable legal framework for the CNGA. Box 3.2 provides an example of the implementation and composition of the Open Government Steering Committee in Tunisia.

Box 3.2. **Tunisia's Open Government Steering Committee**

Tunisia's Open Government Steering Committee (OGSC), which was replaced later by the Open Government Consultative Joint Committee, was established on 15 April 2013. The Steering Group was created to co-ordinate the Tunisian Open Government agenda and the co-operation with the OECD Open Government Project. The Steering Group's membership comprises representatives of the Tunisian government, civil society and the Assembly.

After becoming an OGP member in early 2014, the primary task of Tunisia's governing body for the OGP process – the Open Government Joint Advisory Committee – was the formulation of Tunisia's OGP Action Plan over the coming months, including the organisation of active stakeholder consultations and the follow-up on its implementation. The Joint Advisory Committee is an advisory organism that gathers five members of civil society and five members of the government.

The following government representatives form part of the Commission:

- three representatives of the Presidency of the Government (the E-Government Unit, the legal advisory department and the General Directorate for administrative reforms)

- one representative of the Ministry of Finance

- one representative of the Ministry of Interior.

In addition, one members of each of the following civil society groups are represented in the Committee:

- the private sector

- education and scientific research

- the association "Touensa"

- the "Elbawsla"association

- the "Open Gov tn". movement

Source: OECD. (2016), *Open Government in Tunisia*, OECD Public Governance Reviews, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264227118-en.

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c) Monitoring and evaluation of open government policies: the need to focus on outcomes

Monitoring and evaluation (M&E) is a key function of CoG institutions. M&E is an essential feature of the open government policy cycle, as it can ensure accountability and continuous improvements of the policy process through feedback loops. Preliminary results from the OECD Survey show that more than 80% of OECD countries monitor the implementation of their open government initiatives through the OGP Independent Reporting Mechanism (IRM), while only slightly more than 40% of member countries specifically evaluate the impact of their open government initiatives (see Figure 3.3). Hence, most OECD countries monitor outputs and outcomes but carry out little evaluation of impact and cost-benefit (OECD, forthcoming).

Figure 3.3. **Does your government monitor the implementation of open government initiatives?**
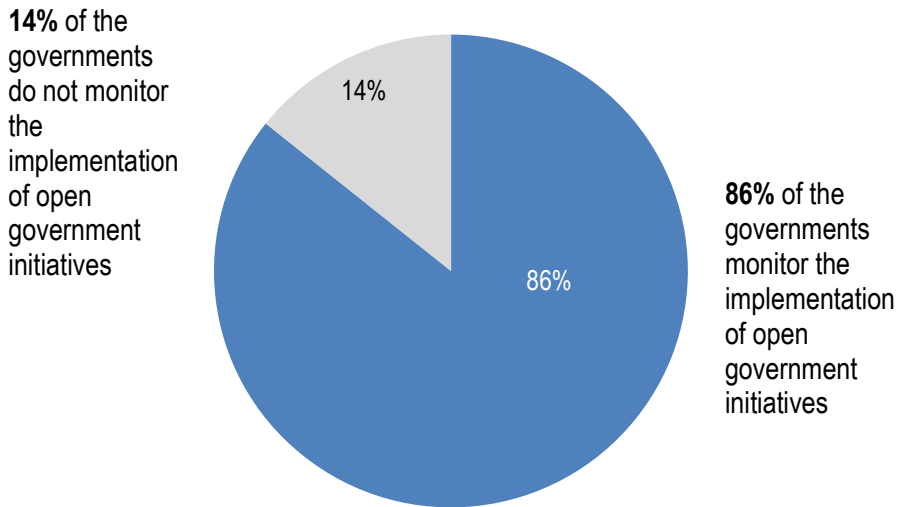
14% of the governments do not monitor the implementation of open government initiatives

14%

86%

86% of the governments monitor the implementation of open government initiatives

Source: OECD (forthcoming), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris.

Figure 3.4. **Does your government specifically evaluate the impact of open government initiatives?**
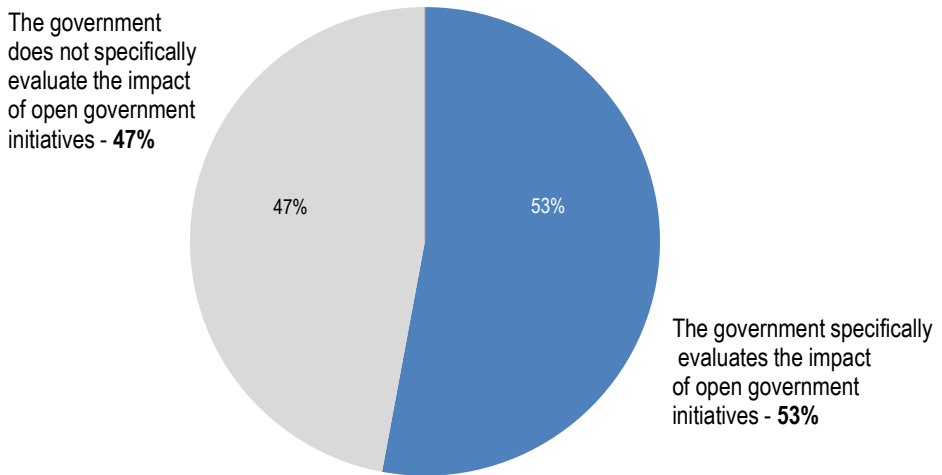
The government does not specifically evaluate the impact of open government initiatives - **47%**

47%

53%

The government specifically evaluates the impact of open government initiatives - **53%**

Source: OECD (forthcoming), *Open Government: The Global Context and the Way Forward*, OECD Publishing, Paris.

Like most OECD countries, Costa Rica has not yet created a monitoring and evaluation system for its OGP Action Plans and the National Open Government Strategy. As of now, the Independent Reporting Mechanism (IRM) of the OGP performs this function. In the framework of the CNGA, the Ministry of Planning and Economic Policy (MIDEPLAN) has started co-operating with the Office of the Deputy Minister to elaborate an adequate monitoring and evaluation mechanism for the country's open government efforts. This effort should be pursued. In elaborating the adequate M&E tools for open government, it would further be advisable to link the implementation of the OGP Action Plan to the implementation of the National Development Plan (NDP) and the well-institutionalised monitoring and evaluation of the NDP done by MIDEPLAN in order to exploit synergies. Box 3.3 offers an example of a successful system established in Colombia for monitoring and evaluating open government initiatives.

Box 3.3. **SINERGIA in Colombia**

Colombia has developed and refined a comprehensive system of information to monitor and evaluate the country's progress towards reaching its main goals. This system, inspired by international experiences such as the Delivery Unit in the United Kingdom and the White House Dashboards in the United States, has allowed Colombia to discuss its priorities as well as identify its biggest challenges. Through it, Colombia has integrated all of the information from the different entities and sectors, with diverse indicators as well as clear guidelines and targets. Through a complete set of indicators, the country has developed user-friendly dashboards and traffic lights to display the information.

The Colombian Constitution requires that all public policies are monitored and evaluated, and SINERGIA is the national system responsible for these tasks. SINERGIA is led by the Direction of Public Policy Monitoring and Evaluation within the National Planning Department and the Presidency of the Republic. A system of monitoring and evaluation of development plans must be implemented by all subnational governments, with the aim of aligning municipal and departmental policy interventions and investment agendas with those of the National Development Plan (this monitoring component is called SINERGIA TERRITORIAL). SINERGIA measures the progress and goals of the projects included in the National Development Plan through three main tools:

1. *SINERGIA Seguimiento*: a set of performance indicators that measures policy outputs and outcomes as identified by the National Development Plan. The system is built following a pyramidal structure with three main levels: strategic, sector and management. Strategic indicators are at the top and are related to the main government pillars as stated in the National Development Plan. These indicators are followed up on by the President and the Council of Ministers. Sector indicators describe sector-specific goals and are monitored by the President and each minister in bilateral meetings and within each ministry. Finally, management indicators are standard indicators that are measured for all of the entities to track institutional efficiency.

2. *SINERGIA Evaluations*: a system to evaluate the outcomes of the main public policies and programmes implemented within the framework of the National Development Plan. Every year, the policies that will be evaluated are selected by a committee of the DNP and approved by the CONPES (National Council for Economic and Social Policy). Policies are evaluated by a recognised, experienced third party (consultancy) so as to guarantee objectivity and transparency in the process. *SINGERGIA evaluations* have increased significantly, reaching 102 evaluations contracted or sustained in 2013.

3. Perception surveys: the National Development Plan Perception Surveys are conducted periodically so as to compare public perception and government results. The results of the polls are public and are found on the SISDEVAL website. Surveys measure the public perception of the way in which the government is achieving the goals it has set.

Box 3.3. **SINERGIA in Colombia** *(continued)*

— In the beginning, SINERGIA focused on central-government management only; in 2004, its scope was broadened to include technical assistance for monitoring and evaluating subnational governments' development plans. It now provides information on the overall performance of the National Development Plan at all levels of government in Colombia. However, at the territorial level, performance-management implementation remains relatively underdeveloped. In 2011, methodological guidelines were approved focusing on performance management at the subnational level; a network of regional officials was created to encourage the exchange of best practices in the field of performance management.

— Through SINERGIA, follow-up is readily available. The Presidency, the government and citizens can follow up on the government's performance, which is an essential tool for building trust in government.

Source: Government of Colombia (2013), "Background Report prepared for the OECD Public Governance Review", unpublished working paper.

A strong open government leadership capacity

The second crucial element for an efficient and effective CoG-led implementation of national open government agendas is the capacity of the CoG institution(s) in charge of open government to exercise leadership. CoG leadership in the field of open government policies comprises at least the following capacities:

    a) to set a strategic vision and a related implementation plan

    b) to ensure policy coherence, collective engagement and consensus building

    c) to activate institutional support and to communicate policies.

a) Vision and strategic planning: the National Open Government Strategy

The CoG must ensure that the entire country develops an all-encompassing vision for open government in the country and articulates and co-produces it in a way that favours the buy-in of all relevant stakeholders. The starting point for this vision is generally a government programme or national development plan (as is the case of Costa Rica) that reflects the political manifesto of the party or parties in power. On the basis of this

starting point, countries then co-produce – with all relevant stakeholders from government, civil society, academia and the private sector – their own independent national open government vision linked to key policy priorities.

In most countries, this national open government vision is the OGP Action Plan. However, while OGP Action Plans have great potential to provide a country with a tool to push for punctual, high-impact initiatives, due to their two-year policy cycles and to the practical nature of open government commitments under the OGP, OGP Action Plans face limitations in providing a country with a long-term strategic open government vision that is fully integrated with and supports the rest of the government priorities. The OECD therefore recommends elaborating independent National Open Government Policies as mechanisms to guarantee policy stability, provide the necessary guidance and overcome the short-term nature of OGP Action Plans.

Costa Rica's National Open Government Commission has successfully elaborated such a National Open Government Policy, making it one of first countries in the world to do so, displaying its capacity for strategic planning. On 7 December 2015, the CNGA held a public event in the presence of the President of the Republic to present the National Strategy for Open Government (*Estrategia Nacional de Gobierno Abierto*). The Strategy represents a good practice at the international level and could provide an example for other countries to follow. It has significant potential to guide the elaboration of open government and open state policies and help the country in its move towards an open state.

The stated aim of the Strategy is to achieve the goal of "an open, transparent and efficient government to fight against corruption", as stated is in the National Development Plan 2014-18. By operationalising the open government pillar of the National Development Plan, the Strategy connects the country's OGP Action Plan (see below for a discussion of the plan) with the country's guiding policy vision, the National Development Plan 2014-18. This shows that the government understands the value of open government for the achievement of wider national policy objectives as well as medium- and long-term development. In this, it recognises that open government is not an end in itself but a means to achieve better lives for Costa Ricans, no matter where they live in the country.

The Strategy was declared "of public interest" by means of decree 39372-MP-MC, a testimony to the importance given to the national open government agenda by the current administration. The most important challenge for the CoG is to ensure that the policy is integrated in the activities linked to the implementation of the open government component of the NDP and the monitoring and evaluation responsibilities of

MIDEPLAN. In Box 3.4, examples from Lithuania and South Africa demonstrate the successful linkage between open government practices and overall national objectives.

Box 3.4. **Defining a national vision based on open government practices in Lithuania and South Africa**

The government of Lithuania has engaged in an in-depth process to define its national strategy "Lithuania 2030". The State Progress Council, led by the Centre of Government, was responsible for the drafting process of the strategy, while government authorities, business leaders, community groups and prominent public figures participated in its development. Three working groups were set up on smart economy, smart governance and smart society. The consultation occurred at the national level and included Lithuanians living abroad. The Council also went on a road trip to engage in discussions with mayors, municipality representatives, young people and CSOs. Innovative approaches were developed to involve harder-to-reach groups. Since the elderly in particular were seen not to believe in the strategy, the Council reached out to school children, who were trained to interact with the elderly. The outcome is a national strategy that is guiding the policies of the whole country and whose implementation is monitored in an inclusive process (OECD, 2015c).

South Africa equally embarked on an inclusive process to define its National Development Plan – Our future make it work – South Africa's vision through 2030. A Commission with 25 commissioners was responsible for leading the planning process and was designed to take an independent view and consult various stakeholders in society. The Commission consulted policy communities, community-based organisations, political parties, labour unions, business organisations, government departments, the Forum of South Africa Director's General (FOSAD), the Cabinet, and provinces and municipalities through various means such as TV and radio interviews and talk shows, newspaper inserts and op-ed pieces, roundtable discussions, fireside chats, social media conversations, Jam – 72 hour (a collaborative online brainstorming session), YouTube animations and a dedicated e-mail address for written comments/submissions. This process aimed at defining overarching goals, building consensus and providing a common framework for action given limited resources (Khulekani, 2014).

Sources: OECD (2015c), *Lithuania: Fostering Open and Inclusive Policy Making*, OECD Public Governance Reviews, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264235762-en; Khulekani, M. (2014), "Presentation on the National Development Plan by the National Planning Commission Secretariat", South Africa in the framework of an OECD seminar (24 March 2014).

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b) Collective engagement and consensus building

One of the most challenging tasks for the CoG is to ensure that the whole-of-government vision is taken on board and accepted by a large share of public sector officials and employees (OECD, 2015d). Once a national open government vision has been co-created with civil society, the CoG must give specific form to this vision, that is, to make it coherent and render

it operational. National consensus is not an ex-post exercise but starts with a participatory and inclusive identification of open government priorities and the joint drafting of the plan, consulting with all relevant stakeholders within and outside government. Given its broad representation, including members from government, civil society and academia, the CNGA is in an ideal position to ensure the coherence of the country's open government commitments and to link the different existing initiatives.

The second OGP Action Plan and the National Open Government Strategy, elaborated by the CNGA, reflect the consensus found between different ministries, civil society and the private sector. Interviews held during the OECD Peer Review mission indicated that most stakeholders from government and civil society saw these documents as the result of a collective process that reflects a consensus found between different opinions and objectives. Actors know each other well, and communication channels are open and transparent. It appears that the creation of the National Open Government Commission has positively contributed to the national consensus-building exercise, providing the CoG with an effective and permanent tool for discussing and for communicating national priorities.

Facilitating more regular meetings between the highest levels of government, civil society and academia in the framework of the CNGA and its sub-commission as well as the establishment of clearer methodologies to co-create, co-implement and co-evaluate initiatives such as OGP Action Plans will guarantee the continuity of the country's efforts and further foster the existing strong collective commitment to open government.

c) Activation of institutional support and policy communication: creating awareness about open government

Given its high level of political representation, the CNGA can activate political and institutional support. The level of its members (ministers or deputy ministers as well as leaders of key civil society organisations) is an asset from the point of view of disseminating the importance of open government principles. In the mobilisation of support, effective communication of the benefits of implementing open government both in terms of policy results and change of administrative practices is essential.

Without citizens' participation, most open government initiatives and policies are doomed to fail. Clear, simple, timely and efficient communication raises policy awareness among public and private stakeholders, can help foster the feeling of shared goals among the parties involved and should be conceived as a permanent component of the policy cycle. Given that open government is a relatively new subject and many countries have lamented a general unawareness and even misperception of

what open government is all about, communication is key to share the principles and practices of open government both within and outside government. OECD data show that public servants, companies, civil society organisations and citizens across OECD countries and the LAC region are not yet fully aware of the potential benefits of a more open, transparent and participatory government (see Figure 3.5 for a comparison of open government awareness in 11 Latin American countries).

Figure 3.5. **Stakeholder awareness of open government initiatives in 11 Latin American countries**
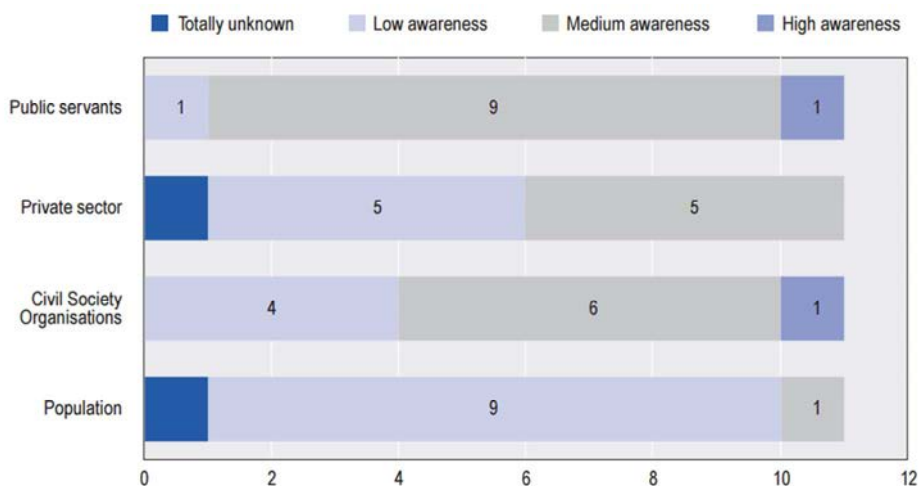
Source: OECD (2014a), *Open Government in Latin America*, OECD Public Governance Reviews, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264223639-en.

The Costa Rican administration has started communicating and disseminating the principles of open government across government and civil society. For instance, it has established more than 30 roundtables and working groups with different sectors and populations to disseminate the open government principles of transparency, accountability and citizen participation. Moreover, the event at which the National Open Government Strategy was presented by the President served as a major platform to promote the country's open government efforts and received wide media attention, and the second OGP Action Plan includes commitments to improve open government communication.

Despite these important efforts, great potential remains to design a more ambitious open government communications strategy led by the CoG and involving all relevant actors, including civil society and the media. The

CNGA should lead these efforts. Box 3.5 includes an example of the successful open government communications strategy carried out in the United Kingdom.

Box 3.5. **Open government communication in the United Kingdom**

The Cabinet Office of the Government of the United Kingdom has set up a blog on Open Policy Making on the website openpolicy.blog.gov.uk. Topics covered by the blog display the wide range of open government policies in the United Kingdom. The easy-to-read entries aim at bridging the work of policy makers and citizens and make open government initiatives tangible to a wider audience. The blog publishes brief articles on the different activities of the Open Policy Making team, including articles on "What do civil servants need to learn about user-centred design?" or a report of a panel discussion: "Should policymakers be policy designers?". The government's blog works closely with the Open Government Partnership (OGP) and aims at advancing the open government agenda in the country.

Source: Government of the United Kingdom (n.d.), "Open Policy Making Blog", https://openpolicy.blog.gov.uk.

Effective and efficient open government co-ordination in a context of public sector fragmentation

In addition to leadership, effective and efficient co-ordination of open government policies is crucial for their successful implementation. To carry out its strategic role effectively, the CoG not only needs to lead, but it also needs to co-operate and collaborate with all institutions that have a role in the implementation of open government policies. This is all the more important in an area such as open government, as open government initiatives are often of a multi-sector nature (i.e. the importance of ICTs for transparency and access to information) and the wide range of actors involved in the implementation of any country's open government agenda (e.g. the OGP Action Plan), ranging from the National Post to the Ministry of Health and the Ombudsman, constitute a challenge for the CoG.

The National Open Government Strategy provides an excellent opportunity for the CoG to develop stronger links between different existing strategies, to cluster them under a common open government umbrella and to give them a strong institutional anchorage. Many initiatives, such as the Digital Government Master Plan (*Plan Maestro de Gobierno Digital*) and the National Telecommunications Development Plan (*Plan Nacional de*

Desarrollo de las Telecomunicaciones), are still implemented in a relatively siloed way.

The *Enlaces Institucionales* (i.e. open government contact points), established for the design and implementation of the second OGP action plan, are an important first step to ensure inter-institutional co-ordination. An initiative taken by the CoG, the *Enlaces* constitute the contact points of the Deputy Ministry of the Presidency in the different central government ministries, decentralised institutions, some municipalities, the ombudsman, the judiciary etc. At the time of writing, there were 36 *Enlaces* (see Box 3.6). The government aims to create at least one *Enlace* in each institution that is involved in the implementation of its open government agenda. The *Enlaces* have met regularly over the past months and have received capacity-building co-operation from the OGP Support Unit.

While the *Enlaces* do not formally report to the Deputy Ministry of the Presidency, they volunteer to collaborate with it and have the potential to provide the CoG with an effective co-ordination tool, both horizontally and vertically. However, findings from the OECD Peer Review Missions indicate that the *Enlaces* – for the time being – are people rather than institutions. The government could consider attaching the *Enlaces* to a certain position within an institution in order to guarantee policy stability and continuity. The next step could further include creating more contact points at the subnational level and institutionalising the *Enlaces* via a decree or law.

Box 3.6. **The open government contact points – *Enlaces Institucionales***

1. Costa Rican Social Security Entity (*Caja Costarricense de Seguro Social*)

2. Costa Rican Electricity Institute *(Instituto Costarricense de Electricidad)*

3. National Insurance Institute *(Instituto Nacional de Seguros)*

4. Costa Rican Oil Refinery *(Refinadora Costarricense de Petróleo)*

5. National Power and Light Company *(Compañía Nacional de Fuerza y Luz)*

6. Central Bank *(Banco Central)*

7. Ministry of Public Education *(Ministerio de Educación Pública)*

8. Ministry of the Presidency *(Ministerio de Presidencia)*

9. Ministry of Justice and Peace *(Ministerio de Justicia y Paz)*

10. Ministry of Science, Technology and Telecommunications *(Ministerio de Ciencia, Tecnología y Telecomunicaciones)*

Box 3.6. **The open government contact points – *Enlaces Institucionales* (cont'd.)**

11. Ministry of Public Works and Transportation *(Ministerio de Obras Públicas y Transportes)*

12. Ministry of Public Security *(Ministerio de Seguridad Pública)*

13. Ministry of Economy, Industry and Commerce *(Ministerio de Economía Industria y Comercio)*

14. Ministry of Environment and Energy *(Ministerio de Ambiente y Energía)*

15. Ministry of Labour and Social Security *(Ministerio de Trabajo y Seguridad Social)*

16. Judicial Power *(Poder Judicial)*

17. Ombudsmann *(Defensoría de los Habitantes)*

18. Road Safety Council *(Consejo de Seguridad Vial)*

19. Pension Superintendency *(Superintendencia de Pensiones)*

20. National Roads Council *(Consejo Nacional de Vialidad)*

21. National Institute of Statistics and Census *(Instituto nacional de Estadística y Censos)*

22. Municipality of Palmares *(Municipalidad de Palmares)*

23. Technical Secretariat for Digital Government *(Secretaría Técnica de Gobierno Digital)*

24. Ministry of Planning and Economic Policy *(Ministerio de Planificación y Política Económica)*

25. Ministry of Housing and Human Settlements *(Ministerio de Vivienda y Asentamientos Humanos)*

26. National Training Institute *(Instituto Nacional de Aprendizaje)*

27. Joint Institute for Social Aid *(Instituto Mixto de Ayuda Social)*

28. National Institute of Rural Development *(Instituto Nacional de Desarrollo Rural)*

29. National Institute of Housing and Urban Development *(Instituto Nacional de Vivienda y Urbanismo)*

30. Ministry of Agriculture and Livestock *(Ministerio de Agricultura y Ganadería)*

31. National Council of Production (*Consejo Nacional de Producción*)

32. National Archives (*Archivo Nacional*)

33. Ministry of Foreign Trade (*Ministerio de Comercio Exterior*)

34. Ministry of Finance (*Ministerio de Hacienda*)

35. Viceministry of Peace (*Viceministerio de Paz*)

36. General Direction of Civil Service (*Dirección General del Servicio Civil*)

Source: OGP Costa Rica Action Plan.

In the context of a highly fragmented public sector as in the case of Costa Rica, the successful implementation of open government policies requires a higher degree of collaboration among different institutions and levels of government. In order to fully exploit synergies, the CoG has to ensure:

- horizontal policy co-ordination and collaboration

- vertical policy co-ordination and collaboration

- co-ordination and collaboration with other state actors.

a) Horizontal policy co-ordination and collaboration

The horizontal co-ordination capacity of the CoG is all the more important to a successful implementation of open government policies, as most governments in OECD countries in fact operate more as networks of related institutions rather than as a unitary structure shown on the organigram (OECD, 2016). This network structure poses challenges when the need arises to introduce broad open government reforms that cut across institutional boundaries (ibid.) This is all the more difficult in a context characterised by considerable public sector fragmentation, as is the case in Costa Rica (see below).

As mentioned above, Costa Rica's key CoG actors involved in open government policy making are the Ministry of the Presidency, the Ministry of Planning, the Ministry of Finance (*Hacienda*) and the Budget Authority. Given that the Ministry of the Presidency, the Secretariat of the CNGA, does not control the budget of the central government nor of the decentralised sector, the Presidency's co-ordination with other CoG institutions and in particular the Ministry of Finance and the Budget Authority becomes crucial to support the implementation of policies. The Office of the Vice Minister of the Presidency for Political Affairs and Citizen Dialogue is aware of the importance of collaborating with *Hacienda* and has started involving it in the open government process. For instance, the Ministry of Finance is a member of the CNGA.

Just like *Hacienda*, the Ministry of Planning and Economic Policy (MIDEPLAN) is an important member of the CNGA. MIDEPLAN is responsible for public sector reform as well as for the design and M&E of the National Development Plan. The OECD Public Governance Review of Costa Rica finds that a substantial part of the CoG's overall strategy, policy co-ordination, performance monitoring and policy advice functions is located at MIDEPLAN rather than at the Presidency (OECD, 2015a). Therefore, close co-ordination between the two CoG institutions is fundamental. In the framework of the CNGA, MIDEPLAN is co-operating

with the Office of the Deputy Minister to elaborate an adequate monitoring and evaluation mechanism for the country's open government efforts. MIDEPLAN should further be a key partner in ensuring that the country's open government efforts taken in the framework of the National Open Government Strategy and the OGP are linked to the government's wider policy planning, including the NDP and long-term plans such as *Costa Rica 2030.* In designing the National Open Government Strategy, the government has made great efforts to build up stronger linkages with the NDP. It is, however, too early to evaluate whether this will lead to better policy outcomes and impacts.

b) Vertical policy co-ordination and collaboration

Vertical policy co-ordination across levels of government is equally important (see Chapter 5 for a detailed elaboration on the levels of government in Costa Rica). Subnational governments are closer to citizens' needs and should naturally be key actors in the open government policy cycle. However, only a limited number of OECD and OGP countries are actively collaborating with their subnational entities. Countries admit that the lack of incentives for institutions to co-operate, as well as the lack of policy links, often has a negative impact on policy implementation and dissemination across public institutions at the subnational level. Limited capacities and resources at the local level and other regional particularities (such as geographic isolation or highly centralised national administration) can further hinder vertical policy co-ordination.

As will be discussed in Chapter 5, only a limited number of Costa Rican municipalities are involved in the open government policy cycle. The Municipality of Palmares is the most active in this regard. It forms part of the *Enlaces Institucionales* and participates in capacity-building seminars and other activities offered by the central government. In the elaboration of both the second OGP Action Plan and the National Open Government Strategy, seminars took place at the local level. Costa Rica should consider creating more *Enlaces* in subnational entities in order to engage them more actively in its open government process. Box 3.7 describes a policy-making toolkit implemented in the United Kingdom.

Box 3.7. **The United Kingdom's Open Policy Making Toolkit**

In April 2015, the Cabinet Office of the Government of the United Kingdom introduced a capacity-building toolkit for its civil servants involved in policy making. It aims at using the benefits of digital progress through:

- "using collaborative approaches in the policy-making process, so that policy is informed by a broad range of input and expertise and meets user needs

- applying new analytical techniques, insights and digital tools so that policy is data driven and evidence based

- testing and iteratively improving policy to meet complex, changing user needs and making sure it can be successfully implemented."

To this end, the Government of the United Kingdom elaborated a policy lab, which enhances collaboration across the departments and generates innovative approaches to tackle challenges in the process of policy making. Currently, the lab focuses on three main areas:

- "providing new policy solutions through inspiring practical projects

- building the skills and knowledge of the policy profession and wider civil service

- inspiring new thinking and innovation in policy through writing and experimenting."

In the projects, which run for between three months and a year, civil servants from different state departments come together with experts on the respective focus area, data scientists, service designers or ethnographers to contemplate new approaches to policy making. Since November 2015, more than 2 500 civil servants of the United Kingdom participated in the capacity-building courses, workshops or hackathons. The ten projects organised so far covered a wide range of topics and encompassed policy challenges from policing in a digital age to the future of aging. The projects were designed in an inclusive approach so that a total of 5 000 citizens and government representatives participated in the Open Policy Making labs.

In cases in which citizens are unable to directly be involved, they can give their input through social media channels, interviews or user research carried out by the civil servants. Apart from the Policy Labs, the toolkit proposes numerous different approaches. One example is a so called "idea jam", which brings together citizens with policy makers in one-day workshops to contemplate new policies. These "idea jams" have the objective that civil servants are able to formulate better policies that target the actual needs of the people, due to the close interaction with the citizens and their proposals.

Measuring impact of the Open Policy Toolkit

The Government of the United Kingdom acknowledges that there are multiple approaches to measure the impact of the proposed initiatives, given the great variety of policies covered. Common preconditions for a thorough evaluation and impact assessment entail the involvement of all the stakeholders in the discussion on the design and delivery of the policy. Analysts from different departments can also contribute to assess the feasibility of the projects or give their input on the policy.

Source: Government of the United Kingdom (n.d.), "Open Policy Making Toolkit", www.gov.uk/guidance/open-policy-making-toolkit.

c) Co-ordination and collaboration with other state actors

As discussed in Chapter 2, the move towards an open state involves co-ordination and collaboration with other state actors, including the Legislative Assembly, the Ombudsman, the *Procuraduria* and the Judicial Power. For the time being, only a limited number of OECD countries have established mechanisms to co-ordinate the implementation of their open government policies with other branches of the state. Costa Rica has been one of the world's pioneers in this area. The judicial branch and the ombudsman already form part of the *Enlaces Institucionales*. Costa Rica could consider establishing an institutional contact point in the Legislative Assembly to involve the legislature more actively in the open government process.

The CoG's role in implementing open government policies: Costa Rica's first and second OGP Action Plans

Costa Rica joined the Open Government Partnership (OGP) in January 2012, declaring that this international platform would enable the country to consolidate the efforts made over recent years in relation to transparency, access to information and the fight against corruption. The design of the first OGP Action Plan was led by the Digital Government Technical Secretariat, which received the mandate to co-ordinate the open government process from President Chinchilla.

As illustrated in Table 3.1, the country presented a first OGP Action Plan in 2013 but did not prepare a self-assessment report of this plan, as requested by the OGP. The first action plan was then evaluated by the OGP's Independent Reporting Mechanism (IRM) in February 2015. Finally, Costa Rica presented a second OGP Action Plan in October 2015 and is currently implementing it.

Table 3.1. **Costa Rica's participation in the Open Government Partnership**

OGP Member since	2012
1st OGP Action Plan	January 2013 (-2014)
Self- assessment	No self-assessment report has been published
Independent reporting mechanism	February 2015
2nd OGP Action Plan	October 2015 (-2017)

Source: OGP (2016), "Costa Rica", Open Government Partnership, www.opengovpartnership.org/country/costa-rica.

This section assesses CoG leadership and co-ordination in the elaboration, implementation and evaluation of Costa Rica's OGP Action

Plans. Box 3.8 includes an excerpt of the OGP's Open Government Declaration.

Box 3.8. **The Open Government Partnership: Open Government Declaration (Excerpt)**

As members of the Open Government Partnership, committed to the principles enshrined in the Universal Declaration of Human Rights, the UN Convention against Corruption and other applicable international instruments related to human rights and good governance:

We acknowledge that people all around the world are demanding more openness in government. They are calling for greater civic participation in public affairs, and seeking ways to make their governments more transparent, responsive, accountable and effective.

We recognise that countries are at different stages in their efforts to promote openness in government, and that each of us pursues an approach consistent with our national priorities and circumstances and the aspirations of our citizens.

We accept responsibility for seizing this moment to strengthen our commitments to promote transparency, fight corruption, empower citizens and harness the power of new technologies to make government more effective and accountable.

We uphold the value of openness in our engagement with citizens to improve services, manage public resources, promote innovation and create safer communities. We embrace principles of transparency and open government with a view toward achieving greater prosperity, well-being, and human dignity in our own countries and in an increasingly interconnected world.

Together, we declare our commitment to:

- increase the availability of information about governmental activities

- support civic participation

- implement the highest standards of professional integrity throughout our administrations

- increase access to new technologies for openness and accountability.

Source: OGP (n.d. c), *Open Government Declaration*, http://www.opengovpartnership.org/about/opengovernment-declaration.

Costa Rica's First OGP Action Plan (2013-14)

The process that culminated in the first Costa Rican OGP Action Plan was led by the Digital Government Technical Secretariat (DGTS), which was institutionally located in the Costa Rican Electricity Institute – a

decentralised public institution – and hence outside of the Centre of Government. The DGTS conducted outreach activities aimed at disseminating the OGP's mission among civil society and government officials in February 2013 (Martínez, 2013). However, like many other members of the OGP, Costa Rica experienced difficulties in defining a process to design its OGP commitments. The draft action plan that was presented to the public was not co-created with civil society. Once elaborated by the DGTS, the draft plan was available for online public consultation for a short period of time, and public agencies, civil society, academia and the private sector had the chance to make suggestions and comments on the 19 commitments, which focused mainly on the improvement of service delivery and the publication of government data. Only a limited number of CSOs commented on the draft (Martínez, 2013).

The design process also included the participation of representatives from Peru's Working Group in the framework of the OGP (including Peru's Presidency of the Council of Ministers), from the OGP Technical Secretariat and from the Federal Access to Information and Data Protection Institute (IFAI) of Mexico (Martínez, 2013). The institutions shared lessons learned and organised several meetings with civil society representatives and government officials from Costa Rica (Martínez, 2013). However, this process took place *after* the Digital Government Secretariat had drafted the first Action Plan.

Moreover, the process did not involve civil society organisations from outside of the metropolitan area, nor did it involve the private sector, the subnational level or the decentralised sector. A truly inclusive process should include all relevant stakeholders in the design as well as all other stages of the action plan cycle.

Box 3.9. **OGP Actions Plans: Transformative open government reform priorities**

Open government commitments assumed under OGP membership need to address at least two of the five following objectives (OGP, n.d. a):

- improving public services
- increasing public integrity
- managing public resources more effectively
- creating safer communities
- increasing corporate accountability.

Box 3.9. **OGP Actions Plans: Transformative open government reform priorities**
(continued)

According to the OGP guidelines, an action plan needs to define a list of the most transformative open government reform priorities based on the following three criteria (OGP, 2015):

- ambitious: aiming to extend beyond existing reforms

- relevant: advancing transparency, accountability, participation and/or technology and innovation

- SMART: specific, measurable, answerable, relevant and time-bound.

Sources: OGP (n.d. a), "OGP national action plan guidance note", Open Government Partnership, www.opengovpartnership.org/sites/default/files/attachments/OGP_actionplan_guide%20FINAL_0.pdf (accessed 24 September 2015); OGP (2015a), "How it works: Action plans", Open Government Partnership, www.opengovpartnership.org/how-it-works/action-plans (accessed 24 September 2015).

The content of the first OGP Action Plan: A strong focus on Open Data

The final version of Costa Rica's first OGP Action Plan entailed a limited number of transformative commitments. As also observed in the first Action Plan cycle of other OGP countries, most commitments were comparably easy to implement and were already completed or in development as part of the ongoing digital government agenda led by the DGTS.

Table 3.2 provides an overview of the commitments and the main institutions in charge of the implementation of Costa Rica's first Action Plan. As in other countries in which the responsibility for open government was given to the institution in charge of the digital government agenda (like Mexico and New Zealand), Costa Rica's first plan had a strong focus on digital government and the use of ICTs.

Table 3.2. **Open government commitments and institutions responsible for their implementation: First OGP Action Plan**

Costa Rica's First OGP Action Plan Commitments (2013-14)	Ministry of the Presidency	MIDEPLAN	Technical Secretariat for Digital Government (STGD)	Ministry of Economy, Trade and Industry	Ministry of Security	National Post	Ministry of Health	Ombudsman	Ministry of Science and Technology	Ministry of Foreign Affairs	Other
1. IMPROVE PUBLIC SERVICES											
Advance and strengthen the Online Portal (www.gob.go.cr)			■								■
Use the platform "*Crear Empresa*" in all municipalities			■	■							
Extend access to electronic services			■		■	■					■
Foster the use of the platform "*En Tiempo*"			■	■							
Implement the e-platform for sanitary registration of products			■				■				
Implement a feasibility study on the modernisation of the service portal						■					
Foster interoperability			■								
Strengthen the National System of Comptrollers of Services		■									
Feasibility study on modernising the postal service						■					
Update the guide for the development of websites			■								
2. ENHANCE PUBLIC INTEGRITY, TRANSPARENCY, ACCOUNTABILITY AND CITIZEN PARTICIPATION											
Implement the opening of the public budget			■								■
Develop an Index of Transparency of public institutions	■	■	■					■			
Present Law on Access to Public Information to the Legislative Assembly	■										
Define and implement the national policy on open data			■						■	■	■
Advance the opening of data in public institutions			■								■
Diffuse the concept of open government in public institutions, society and public opinion	■		■							■	■
Develop a manual for the use of social media in public institutions			■								
Empower society beyond the access to information and possibilities for citizen participation			■								■
Organise the first Hackathon of Open Data and follow-up events			■								
Organise a forum on access to information and citizen participation in environmental issues										■	

Costa Rica's First OGP Action Plan Commitments (2013-14)	Ministry of the Presidency	MIDEPLAN	Technical Secretariat for Digital Government (STGD)	Ministry of Economy, Trade and Industry	Ministry of Security	National Post	Ministry of Health	Ombudsman	Ministry of Science and Technology	Ministry of Foreign Affairs	Other
Issue a guideline for the publication of proceedings	■										
3. ENHANCE EFFICIENCY OF PUBLIC RESOURCES											
Implement a system of pensions in the National Pensions Directorate			■								■
Implement a single system of public expenditures			■								■
Implement the Project "Digital Citizen Security"			■		■						

Source: OGP (Open Government Partnership) (2013), "Costa Rica Action Plan 2013-2014", OGP, www.opengovpartnership.org/country/costa-rica/action-plan.

The first OGP Action Plan had three focus areas:

1. **Improving public services**: In order to enhance the quality of public services, the Action Plan put an emphasis on the creation of online platforms such as "*En tiempo*", "*Crear Empresa*" and the government portal "www.gob.go.cr". The DGTS held the responsibility for the implementation of eight of the ten commitments on public service improvement (see Table 3.2), which is testimony to the DGTS's leading role in the open government process at that time.

2. **Enhance public integrity, transparency, accountability and citizen participation**: The commitments under this heading relied mainly on the promotion and diffusion of the principles of open government. Moreover, the plan called for the presentation of a Law on Access to Public Information to the Legislative Assembly. Again, the DGTS oversaw the enactment of eight of the eleven commitments.

3. **Enhance the efficiency of public resources**: This area focused mainly on the implementation of ongoing projects such as a single public procurement platform and a digital citizen safety project ("*Seguridad Ciudadana Digital*"). The DGTS was responsible for the implementation of these commitments.

Evaluating Costa Rica's first OGP Action Plan: Some room for improvement

The OGP stipulates that, before the end of the two-year period of each country's Action Plan, an Independent Reporting Mechanism (IRM) conducts an evaluation. This evaluation is done by an independent scholar who assesses the progress made in implementing the commitments. In the case of Costa Rica, the IRM report was prepared by Israel Aragón Matamoros, who gave a series of recommendations (OGP, 2014), including to:

- assign responsibility for co-ordinating Costa Rica's OGP projects to a body with access to the highest political power

- involve civil society more in all stages of the OGP process, both in terms of quality and quantity; carry out consultations outside of San José; include activities that involve CSOs that are not part of the "Red C"

- include commitments around initiatives promoted by other sectors or new political areas such as the judiciary, CONAMAJ, the Legislative Assembly and the private sector

- align the open government action plan with the strategic plans and other relevant topics for the country such as transparency and the environment.

In its evaluation report, the IRM also stressed that "Costa Rica's first Action Plan needed wider civil society participation and overemphasised 'e-government'". The IRM further found that few commitments included in the plan were of a "transformative" nature and that the implementation of most of the country's commitments was "behind schedule" when analysed. This delay can partly be explained by the transitional period created by the 2014 Presidential elections and the changing policy priorities of the incoming government, which included the re-allocation of the responsibility for open government. For a few months, the country's agenda was without a leader, as the way in which the DGTS would continue to be involved in the process was unclear.

Another aspect of a country's OGP membership is the issuing of self-assessment reports. OGP member countries are asked to produce an annual report on the advances of the implementation of their Action Plan. Costa Rica's self-assessment report was submitted to civil society and the public sector for consultation, but it has never been published. The fact of not having a final self-assessment report affects the legitimacy and credibility of the first OGP Action Plan. This accountability mechanism should be used to

show the progress, results and impact obtained, and it allows a country to learn and improve. Costa Rica should therefore ensure that its second OGP Action Plan is accompanied by a self-assessment report that is prepared with the active participation of citizens and that is published.

Overall, the plan and its implementation could have benefited from the incorporation of a wider range of actors. As shown in Table 3.2, overseeing the implementation of the great majority of the commitments was the responsibility of the Digital Government Technical Secretariat, the technical co-ordinator of open government initiatives. The Ministry of the Presidency and MIDEPLAN, the two key CoG open government actors, had only minor tasks in ensuring the implementation of the Plan: the Ministry of the Presidency was responsible for only four of the 23 commitments, while MIDEPLAN oversaw only two of them.

The institutional location of the Digital Government Technical Secretariat within the Costa Rican Electricity Institute complicated its leadership and co-ordination role and constituted a stumbling block to effective and efficient implementation of some of the commitments. As a decentralised institution, it did not have the necessary leverage to exert significant influence on key central government actors that should have been more involved in the process. In order to address these shortcomings, in its 2014 Report on Open Government in Latin America, the OECD – in line with the recommendations of the IRM and other international organisations – therefore recommended strengthening the newly created Open Government National Commission and institutionally re-locating the responsibility for open government within a CoG ministry (OECD, 2014a).

Costa Rica's Second OGP Action Plan (2015-17) – important steps in the right direction

The process to design Costa Rica's second OGP Action Plan was led and co-ordinated by the Deputy Ministry of the Presidency and the CNGA. The elaboration of the Action Plan incorporated the active participation of various stakeholders in all phases, including the first proposal and the design and definition of the commitments.

For instance, the much more participative process included the participation of CSOs from all six socio-economic regions of Costa Rica (Chorotega, Huetar Norte, Pacífico Central, Brunca, Central and Huetar Atlántico). The initiative *Yo Soy Gobierno Abierto/Abriendo Datos de Costa Rica* (see Chapter 2 for a description of the initiative) was founded by civil society in order to include the public's priorities in the second OGP Action Plan.

The design process consisted of more than 20 public hearings in which citizens could make concrete proposals. Citizens' inputs were then discussed with the government representatives in charge of open government and eventually, if approved by consensus, incorporated into the Plan. The public hearings helped to identify relevant stakeholders from civil society that had not participated in the first AP cycle and that are expected to participate in the implementation of the commitments.

As a complement to the work with civil society and different stakeholders, the Deputy Ministry created the aforementioned network of approximately 40 contact points *(Enlaces Inter-institucionales)*. In 40 working sessions, these *Enlaces* had the opportunity to present their proposals for the second Action Plan, allowing the government to receive a wide variety of proposals.

Both the inputs from civil society and from the contact points were then consolidated and converted into one single document. In addition, two workshops were organised by the Deputy Ministry for Political Affairs and Citizen Dialogue to validate and improve the commitments. The workshops included the participation of representatives from civil society and public institutions. Finally, the document was presented to the National Commission on Open Government, which refined the proposals (OGP, 2015). The following diagram shows the different phases for the construction of the second Action Plan.

Figure 3.6. **Phases for the construction of the second OGP Action Plan**
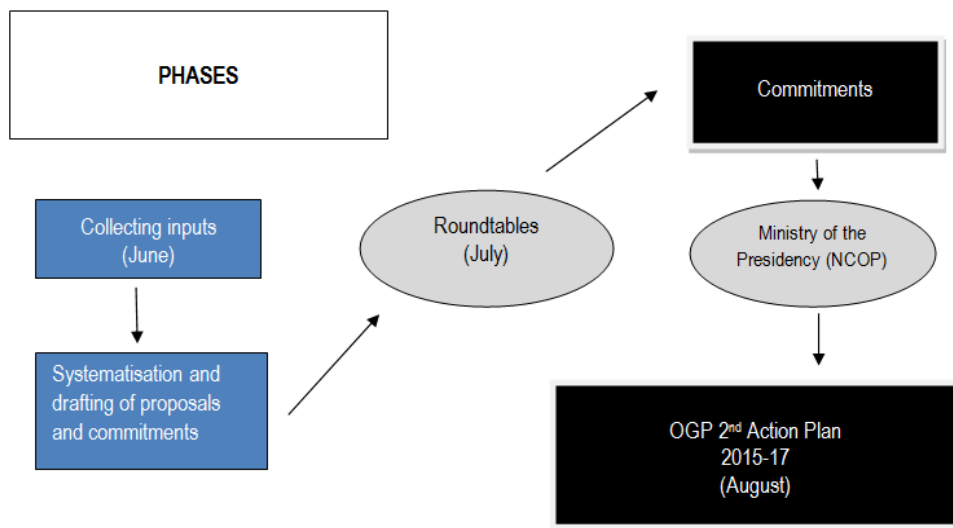
The design of the second AP was characterised by more openness and inclusiveness as it involved more civil society organisations and incorporated the views and input from the subnational level thanks to the organisation of workshops in different regions of the country. This broader participation is largely due to the important co-ordination efforts made by the Deputy Ministry of the Presidency and civil society organisations that formed the initiative *Yo Soy Gobierno Abierto*.

However, there is still space for improvement. According to statistics presented by *Yo Soy Gobierno Abierto,* only 86 people participated in the central region and only 53 people in the rest of the regions. When it comes to civil society organisations, 46 were involved in the central region, and 28 of them participated in the entire the rest of the country (*Yo Soy Gobierno Abierto*, n.d.). Moreover, the process lasted only one month, which limited the number proposals and comments from the subnational level. As will be discussed in Chapter 5, few of the final commitments directly involve the subnational level, and the government should consider further enhancing local governments' participation. In the preparation of its third plan, the government should also consider ensuring a greater amount of time for the first phase of the consultation process, in particular at the local level.

Moreover, the private sector participated only to a very limited degree. The government of Costa Rica could become a pioneer in the region and the worldwide by including the private sector in the design, implementation and evaluation of future OGP Action Plans. Also, a very limited number of decentralised institutions participated (although some institutions are part of the *Enlaces Inter-institucionales)*. Decentralised institutions are a key element of Costa Rica's institutional landscape. Due to the high level of public sector fragmentation in Costa Rica and the key role played by decentralised public institutions in service delivery, the government should consider involving more of these institutions in the open government process.

During the OECD Peer Review mission, some concerns were also raised by civil society organisations that participated in the process of the first Action Plan with respect to the fact that their views and proposals were not taken into account in the final commitments of the second OGP Action Plan. A number of institutions that were involved stated that, between their direct participation and the actual process or re-writing and interpreting the commitments, the commitments became quite different from those initially proposed. Costa Rica's government and civil society could establish a process for the third Action Plan that includes clearer, pre-published criteria for the process.

A much more balanced second OGP Action Plan in terms of content but absence of digital government

Despite some delays, in October 2015, the government of Costa Rica published its second OGP Action Plan for the period of 2015-17. Table 3.3 summarises the commitments of the second Action Plan and the respective ministries in charge of their implementation.

Table 3.3. **Open government commitments and institutions responsible for their implementation: Second OGP Action Plan**

Costa Rica's Second OGP Action Plan Commitments (2015-17)	Ministry of the Presidency	Ministry of Communication	MIDEPLAN	The Directorate General of the National Archives	Ministry of Economy, Trade and Industry	Ministry of National Planning and Economic Policy	Vice Ministry of the Peace	National Commission for Improving the Administration of Justice (CONAMAJ- Judicial Power)	Ministry of Public Works and Transport	Ombudsman
1. TRANSPARENCY AND ACCESS TO INFORMATION										
Open data policy	■	■								
Decree of Transparency and Access to Public Information		■								
Draft bill for access to public information		■								
Informational directory of the profile of public institutions				■		■				
Design pilot plan to implement the model of document management and file management				■						
Strengthening implementation and enforcement of the Law 8220[1]					■					
Inventory and promotion of technology platforms for the development of open government	■									
Development of public sector Open Government Transparency Index of transparency of the public sector by the Ombudsman										■
2. CITIZEN PARTICIPATION										
Training and dissemination processes of citizens' rights	■									
Education and training process in citizen service for public employees	■									
Protocol for dialogue with sectors and populations	■						■			
Dissemination of Citizen Participation Policy of the Judicial Power	■							■		
Tools and mechanisms for promoting citizen participation	■						■			
3. FIGHT AGAINST CORRUPTION										
Publish reports on compliance with the recommendations of Internal Audit	■						■			
Promote reforms to prevent, detect and punish corruption	■									
Ensure transparency in the selection process of civil employees	■									
Promote transparency in the process of management of construction projects	■					■			■	

Notes: 1. "Protection of citizens from excessive administrative requirements and procedures".
Source: OGP (2015b), "Costa Rica Action Plan 2015-2017", OGP, www.opengovpartnership.org/country/costa-rica/action-plan.

The 17 commitments are divided into three pillars:

- **Transparency and access to information (eight commitments):** This focus area underlines the new administration's awareness of the importance of ensuring a solid legal basis for open government in the country. Examples of this include the commitment to elaborate a law on access to information and an access to information decree. The implementation of the eight commitments is distributed among various ministries, including the Ministry of Communication (three commitments) and the Ministry of the Presidency (two commitments).

- **Citizen participation (five commitments):** In order to respond to the criticism raised by the IRM about the first OGP Action Plan, the country decided to devote an entire focus area to citizen engagement. For example, commitments seek to offer training courses on citizens' rights and to disseminate the Citizen Participation Policy of the Judiciary. The Ministry of the Presidency is responsible for the implementation of all five commitments.

- **Fight against corruption (four commitments):** The third area unites reform endeavours that support accountability ("publish reports on compliance with the recommendations of Internal Audit"), transparency ("promote transparency in the process of management of construction projects") and tackling corruption ("promote reforms to prevent, detect and punish corruption"). The Ministry of the Presidency is responsible for all four commitments.

The shift of responsibilities from the DGTS to the Ministry of the Presidency is reflected in the new focus of the action plan. Transparency/access to information and citizen participation are a much greater focus of the plan, while digital government is almost absent. The DGTS is not even included in the list of stakeholders responsible for Costa Rica's second OGP Action Plan. It would be advisable to re-integrate the DGTS and the new director of digital government – the Ministry of Science, Technology and Telecommunications – in the process in order to ensure an adequate representation of the digital government component in the open government process.

Overall, Costa Rica has shown significant progress in terms of its process from the first Action Plan to the second Action Plan. The conformation of the "*Enlaces Inter-institucionales*" has created a window of opportunity to disseminate open government principles inside the public administration, in a variety of sectors and around the country. The government of Costa Rica could strengthen this network by including civil

society organisations, private sector representatives and more entities from the decentralised sector. The government of Costa Rica should ensure the future participation of the *Enlaces* in future Action Plan processes, not only during the design but most importantly also in the implementation and evaluation phases.

Recommendations

In order to further enhance the implementation of open government policies, the country would benefit from a number of initiatives, some of which are currently already on the government's radar.

- **Support the co-ordination and outreach functions of the office of the Deputy Ministry for Citizen Dialogue and Political Affairs of the Ministry of the Presidency of the Republic** by allocating it more human and financial resources, which would allow it to intensify and extend its already successful efforts to promote the national open government agenda.

- **Enhance the inclusiveness of the National Open Government Commission** by including representatives from the Digital Government Technical Secretariat, local governments and more civil society organisations.

- **Institutionalise the inter-institutional contact points (*Enlaces Inter-institucionales*) in order strengthen their capacities to play an effective role in the promotion and co-ordination of open government policies in their respective institutions**. The inter-institutional contact points constitute the Deputy Ministry of the Presidency's counterparts at the different central government ministries, within decentralised institutions, at the office of the Ombudsman, in the Judiciary etc. They provide the operational basis for effective co-ordination and co-operation in carrying out open state policies. While the contact points do not formally report to the Deputy Ministry of the Presidency, they volunteer to collaborate with it and have the potential to provide the CoG with an effective co-ordination tool, both horizontally and vertically.

- **Create contact points at all levels of the administration, including in municipalities and in the decentralised sector, to increase the reach of open government policies** and receive input in terms of monitoring and evaluating their impacts. Civil society could also identify its own open government champions that could be included in the group of contact points. The *Enlaces* could meet regularly in the context of the CNGA and its sub-commissions or

could have a dedicated sub-commission to exchange information on common challenges and share good practices.

- − Institutionalise the role and function of the *Enlaces Inter-institucionales* by a decree or law and consider the designation of public officials to monitor the implementation of new laws regarding access to information and citizen participation. Liaisons covering the entire subnational level should also be created in order to facilitate the inclusion of municipalities in the national open government agenda.

- **Create a monitoring and evaluation (M&E) system for the National Open Government Strategy and the OGP Action Plan, linked to the established procedures of MIDEPLAN** that monitor and evaluate the open government components of the NDP. M&E is an essential feature of the open government policy cycle, as it can ensure accountability and continuous improvements of the policy process through feedback loops. However, like most OECD countries, Costa Rica has not yet created a monitoring and evaluation system for its OGP Action Plans and for the newly created National Open Government Strategy. As of now, the Independent Reporting Mechanism of the OGP performs this function. In the framework of the CNGA, the Ministry of Planning and Economic Policy has started co-operating with the Office of the Deputy Minister to elaborate an adequate monitoring and evaluation mechanism for the country's open government efforts. This effort should be pursued, and Colombia's system SINERGIA could serve as an example.

- **Reinforce the communication activities related to the national open government agenda and its achievements in order to widely share the principles and practices of open government**, both within and outside government, to show their impact and to raise awareness and counter misconceptions of what open government is about.

OGP process

- **Involve civil society organisations at all stages of the OGP process** from design to implementation and evaluation. Make sure that civil society organisations from outside the metropolitan area of San José participate in the process.

- **Involve more subnational governments** in the OGP process.

- **Reinforce monitoring and evaluation of the OGP Action Plan by establishing an open government dashboard (like that of Mexico). Link the implementation of the OGP Action Plan to the implementation of the National Development Plan (NDP)** and the well-institutionalised monitoring and evaluation of the NDP done by MIDEPLAN in order to exploit synergies.

- **Ensure that the second OGP Action Plan is accompanied by a self-assessment report** that is prepared with the active participation of citizens and that is published.

- **Consider ensuring a greater amount of time for the first phase of the consultation process of the third OGP Action Plan**, in particular at the local level.

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Chapter 4

A focus on citizen participation in Costa Rica: From information and consultation to active involvement

This chapter discusses citizen participation practices that exist at different stages of the policy cycle in Costa Rica and examines the involvement of citizens in the drafting process of the National Development Plan and the country's last two OGP Action Plans. While the chapter finds that Costa Rica's levels of citizen participation are relatively low when compared to other Latin American countries, good practices can be found at different administrative levels and at all stages of the policy cycle. In order to systematise these existing good practices, expand their implementation to all levels of governments, and improve upon them, the chapter recommends that the government consider expanding its efforts to promote a culture of civic engagement and participation in public matters and that it consider investing in the capacities of all relevant public institutions to better implement and evaluate citizen engagement initiatives.

Introduction

Fostering citizen participation in shaping government decision making, policy implementation and evaluation is an important pillar of an open government. A stronger government-citizen relation can favour people's trust in public institutions and enhance the legitimacy of the government while making it more transparent and accountable (OECD, 2001). The experience of OECD countries shows that access to information, along with public consultation and initiatives to promote active and conscious citizen participation in policy making all contribute to good governance by improving the quality of policies and services and by ensuring higher levels of implementation and compliance.

Despite having been for decades one the most stable democracies of the region, according to the UNDP National Human Development Report of 2013 (UNDP, 2013), Costa Rica's levels of citizen participation are rather low. In order to address this challenge, the current administration has made increasing citizen participation one of its key priorities.

This chapter describes and assesses the dynamics that support or hinder citizen participation in Costa Rica. It goes on to review OECD work on citizen participation. Special attention is given to citizen participation in the development of the 2015-18 National Development Plan. Finally, the role played by citizens in the creation of the first and second OGP Action Plans and the specific commitments included to strengthen citizen participation are analysed.

Citizen participation and public trust in Costa Rica

According to the UNDP's 2013 Human Development Report (UNDP, 2013), Costa Rica has the lowest percentage of citizen participation in civil society organisations in Latin America. In line with data of the Public Opinion Survey Project for Latin America (LAPOP, 2012), only 41.0 % of the population take part in organisations such as parents' associations, village committees, professional associations, sports groups and parties or political movements. This sharply contrasts with the levels of engagement in Haiti, the Dominican Republic and Bolivia, which range from 91.8 % to 75.9 % (UNDP, 2013). Table 4.1 presents levels of citizen participation in the LAC region.

Table 4.1. **Levels of citizen participation in Latin America and the Caribbean**

Countries with the highest levels of citizen participation	
Haiti	91.8%
Bolivia	84.9%
Dominican Republic	75.9%
Peru	74.5%
Ecuador	72.1%
Countries with the lowest levels of citizen participation	
Costa Rica	41.0%
Brazil	43.4%
Panama	44.1%
Argentina	47.1%
Chile	48.4%

Source: BBC Mundo, "El país con menor participación ciudadana de América Latina", Nefer Muñoz, www.bbc.com/mundo/noticias/2013/10/131025_america_latina_costa_rica_politica (accessed 28 October 2013).

The National Household Survey for Costa Rica 2013 finds that the largest number of people participate in co-operatives[1] and solidarity associations[2] (5.6% and 5.2%, respectively), while the percentage dips as low as 2.8% for unions and 2.0 % for community associations (INEC, 2013). The NDP 2015-18 also states that "in Costa Rica there is a predominance in the participation rates of men over that of women in almost all organisational forms" (MIDEPLAN, 2015). The exceptions are trade unions and community associations, in which a similar proportion of both sexes participate. The NDP also notes that levels of participation vary geographically: in the the Central region, the number of citizens participating in solidarity associations and trade unions is above the national average (6.0% and 5.2% respectively), while in peripheral regions co-operatives are the most common organisational form, especially in Brunca (9.1%), Huetar Norte 7.2% and Chorotega (4.6%) (MIDEPLAN, 2015).

As mentioned above, citizen participation is strongly related to trust in public institutions. Box 4.1 presents data on trust in public institutions in OECD and the LAC region.

Box 4.1. **Trust in public institutions: OECD and LAC region**

As is the case in a great number of OECD member countries all over the world, people in the region are increasingly losing their trust in public institutions and the political system. Levels of trust in government dropped from 53% to 40% between 2010 and 2014 (Gallup World Poll, n.d.), more than three times the average decline across OECD Members for the same period (45% to 40%). According to the 2015 *Latinobarómetro*, government approval ratings across the 17 countries fell from 60% in 2009 to 47% in 2015. A decreased share of citizens call themselves politically "centrist" as opposed to "left wing" or "right wing", with the percentage dropping from 42% in 2008 to 33% in 2015. More and more people in Latin America seem to be losing faith in civic institutions. In 2013, 42% trusted the government, whereas today only 34% indicated that they do. Latin American citizens have rated state bodies like the legislature, courts and political parties as their least trusted institutions ever since *Latinobarómetro* started to collect public opinion data in 1995.

Source: OECD (2015a), *Costa Rica: Good Governance, from Process to Results*, OECD Public Governance Reviews, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264246997-en.

Levels of trust in government in Costa Rica have dropped from 53% to 40% in the past five years - more than five times as much as the average decline across OECD members for the same period (42.5% to 40%; Gallup World Poll, 2014). The Catholic church ranks as the most trusted institution (64.7%), while the political parties and the Legislative Assembly are the institutions with the lowest levels of confidence from the public (31.5% and 37.9% respectively) (Alfaro-Redondo and Seligson, 2012). Even though the country ranks better than other Latin American countries in the Transparency International Corruption Perception Index (CPI), this perception has also worsened in the last few years (Transparency International, 2014). From 2010 to 2014, Costa Rica dropped six positions in the CPI (47th out of 175 countries in 2014).

Open government policies can be an important instrument to increase trust. A first step that the government of Costa Rica could take is to make a more direct and explicit link between the national OG policy and this goal.

OECD work on citizen participation

The OECD Report "Citizens as Partners: Information, Consultation and Public Participation in Policy Making" is the result of over two years of joint efforts by OECD member countries and represents a unique source of comparative information on measures taken to strengthen citizens' access to information, consultation and participation in policy-making (OECD, 2001).

This section presents OECD work on citizen participation and provides practical information on how to inform, consult and engage citizens in the development of public policies.

The goals governments look to in their efforts to strengthen their relations with citizens include:

- improving the quality of policies by tapping into wider sources of information, perspectives and potential solutions

- meeting the challenges of the emerging information society

- integrating public input into the policy-making process to meet citizen expectations

- responding to calls for greater government transparency and accountability

- strengthening public trust in government.

Participation refers to the idea that – in order to fully reap the benefits of active interaction with their populations – governments should treat them as partners by providing information, consulting with or engaging them. The different sorts of government-citizen relations are defined as follows (OECD, 2001):

- **Information** is a one-way relationship in which government produces and delivers information to be used by citizens. It covers both "passive" access to information upon citizen demands and "active" measures by government to disseminate information. Examples include access to public records, official gazettes and government websites.

- **Consultation** is a two-way relationship in which citizens provide feedback to government. It is based on the prior definition by government of the issues on which citizens' views are being sought and on which the government is calling for participation. Governments define the issues for consultation, set the questions and manage the process, while citizens are invited to contribute their views and opinions. Examples include public opinion surveys and comments on draft legislation.

- **Active participation** is a relationship based on a partnership between citizens and the government, in which citizens actively engage in defining the process and content of policy making. It acknowledges equal standing for citizens in setting the agenda, proposing policy options and shaping the policy dialogue – although

the responsibility for the final decision or policy formulation rests with the government. Examples include consensus conferences and citizen juries.

Figure 4.1. **Defining information, consultation and active participation**
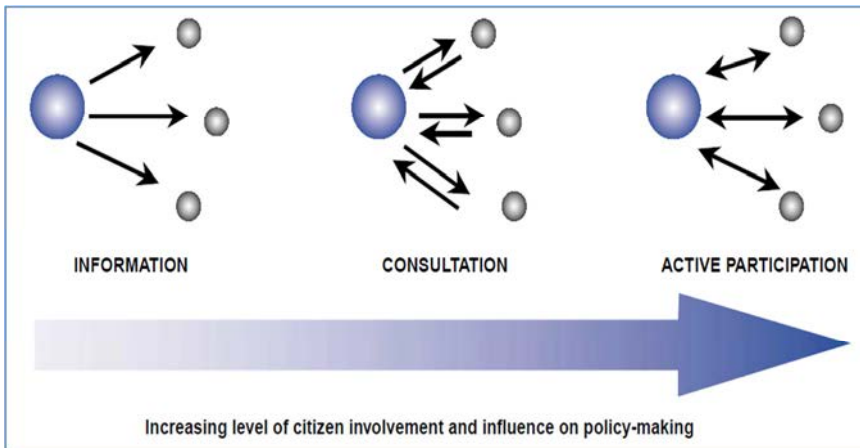
Source: OECD (2001), *Citizens as Partners: Information, Consultation and Public Participation in Policy Making*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264195561-en.

In order to successfully strengthen the relationship with their citizens, governments must ensure that:

- **information** is complete, objective, reliable, relevant and easy to find and understand (see section on access to information law)

- **consultation** has clear goals and rules defining the limits of the exercise and government's obligation to account for its use of citizens' input

- **participation** provides sufficient time and flexibility to allow for the emergence of new ideas and proposals by citizens, as well as mechanisms for their integration into government policy-making processes.

In order for the participation process to be successful, it is essential for governments, CSOs and other stakeholders to establish and apply a set of consistent guidelines that translate the above principles into practical procedures. Box 4.2 presents a number of factors that should be taken into consideration when designing participation processes.

Box 4.2. **Understanding key factors in citizen participation**

Citizen participation can take a wide variety of forms depending on the presence and extent of many key features.

Size. Size of a process can range from a few participants to hundreds or thousands, and online processes potentially involve millions.

Purpose. Processes are used for many reasons: to explore an issue and generate understanding, to resolve disagreements, to foster collaborative action, or to help make decisions, among others (NCDD, 2008).

Goals. Objectives can include informing participants, generating ideas, collecting data, gathering feedback, identifying problems, or making decisions, among others.

Participants. Some processes involve only expert administrators or professional or lay stakeholders, while others involve selected or diffuse members of the public.

Participant recruitment. Processes may use self-selection, random selection, targeted recruitment or incentives to bring people to the table.

Communication mode. Processes may use one-way, two-way, and/or deliberative communication.

Participation mechanisms. Processes may occur face-to-face, online, and/or remotely.

Named methodology. Some processes have official names and may even be trademarked; others do not employ named methodologies.

Locus of action. Some processes are conducted with intended actions or outcomes at the organisational or network level, whereas others seek actions and outcomes at the neighbourhood or community level, the municipal level, the state level, the national level, or even the international level.

Connection to policy process. Some processes are designed with explicit connections to policy and decision-makers (at any of the loci listed above), while others have little or no connection to policy and decision-makers, instead seeking to invoke individual or group action or change.

Source: Nabatchi, Tina (2012), *A Manager's Guide to Evaluating Citizen Participation*, IBM Center for Business of Government, www.businessofgovernment.org/report/manager%E2%80%99s-guide-evaluating-citizen-participation.

The OECD Guiding Principles for Open and Inclusive Policy Making serve as a tool to help policy makers foster a culture of openness and inclusion. They are based on good practices from OECD member countries (See Box 4.3).

Box 4.3. **Guiding principles for open and inclusive policy making**

1. Commitment: Leadership and strong commitment to open and inclusive policy making is needed at all levels – politicians, senior managers and public officials.

2. Rights: Citizens' rights to information, consultation and public participation in policy making and service delivery must be firmly grounded in law or policy. Government obligations to respond to citizens must be clearly stated. Independent oversight arrangements are essential to enforcing these rights.

3. Clarity: Objectives for, and limits to, information, consultation and public participation should be well defined from the outset. The roles and responsibilities of all parties must be clear. Government information should be complete, objective, reliable, relevant, and easy to find and understand.

4. Time: Public engagement should be undertaken as early in the policy process as possible to allow a greater range of solutions and to raise the chances of successful implementation. Adequate time must be available for consultation and participation to be effective.

5. Inclusion: All citizens should have equal opportunities and multiple channels to access information, be consulted and participate. Every reasonable effort should be made to engage with as wide a variety of people as possible.

6. Resources: Adequate financial, human and technical resources are needed for effective public information, consultation and participation. Government officials must have access to appropriate skills, guidance and training as well as an organisational culture that supports both traditional and online tools.

7. Co–ordination: Initiatives to inform, consult and engage civil society should be co-ordinated within and across levels of government to ensure policy coherence, avoid duplication and reduce the risk of "consultation fatigue." Co-ordination efforts should not stifle initiative and innovation but should leverage the power of knowledge networks and communities of practice within and beyond government.

8. Accountability: Governments have an obligation to inform participants as to how they use inputs received through public consultation and participation. Measures to ensure that the policy-making process is open, transparent and amenable to external scrutiny can help increase accountability of, and trust in, government.

9. Evaluation: Governments need to evaluate their own performance. To do so effectively will require efforts to build the demand, capacity, culture and tools for evaluating public participation.

10. Active citizenship: Societies benefit from dynamic civil society, and governments can facilitate access to information, encourage participation, raise awareness, strengthen citizens' civic education and skills, as well as to support capacity-building among civil society organisations. Governments need to explore new roles to effectively support autonomous problem-solving by citizens, CSOs and businesses.

Source: OECD (2009), *Focus on Citizens: Public Engagement for Better Policy and Services*, OECD Studies on Public Engagement, OECD Publishing, Paris, www.oecd.org/gov/focusoncitizenspublicengagementforbetterpolicyandservices.htm.

These principles highlight the importance of co-ordination of engagement initiatives across the entire government in order to avoid consultation fatigue and to create a coherent and systematic approach to citizen participation. They also stress the key role of accountability mechanisms. Finally, they underline the role of monitoring and evaluation of participation initiatives to capture their effectiveness and outcomes, as well as the relevance of promoting an active citizenship that is capable of engaging with the government (OECD, 2015a). As shown in the Table 4.2, information, consultation and active participation can and should be present at different stages of the policy cycle.

Table 4.2. **Information, consultation and active participation throughout the policy cycle**

Stage of policy cycle	Information	Consultation	Active participation
Design	White papers, policy documents Legislative programmes Draft laws and regulation	Large-scale opinion surveys Use of discussion groups or citizens' panels Invitation of comments on draft legislation	Submission of alternative draft laws or policy proposals Public dialogue on policy issues and options
Implementation	New policy or regulations and their provisions	Use of focus groups to develop secondary legislation	Partnership with CSOs to disseminate information on compliance with new laws
Evaluation	Public notice of evaluation exercises and opportunities to participate	Inclusion of stakeholders in reviews of government evaluation programmes and results	Independent evaluation conducted by CSOs

Source: OECD (2015a), *OECD Regulatory Policy Outlook 2015,* OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264238770-en.

Citizen participation in the different stages of the policy cycle in Costa Rica

This chapter also presents the results of the OECD questionnaire on Citizen Participation in the Policy Cycle ("The CPPC Questionnaire") and some preliminary results of the OECD Survey on Open Government (the "Survey"). The CPPC Questionnaire was sent to the government of Costa Rica (Office of the Deputy Minister for Citizens' Dialogue in the Ministry of the Presidency) who kindly forwarded it to the inter-institutional contact points (see Chapter 3). Respondents (including civil society organisations and representatives of the private sector) were asked to provide information and data about policies and practices aimed at involving citizens in the policy cycle. The survey had five sections:

- a description of the participatory approach (i.e. the "case")

- resources used to implement the case

- partnerships that were developed with others entities (not necessarily public)

- results obtained

- lessons learnt.

In total, the OECD Secretariat received 14 responses from the following institutions and civil society organisations: Deputy Minister for Political Affairs and Citizen Dialogue of the Ministry of the Presidency of Costa Rica, the Organisation *Abriendo Datos*, the Organisation *Accesa*, the Costa Rican Drug Institute, the Ministry of Finance, the National Production Council, the Ministry of Agriculture, the Municipality of Palmares, the Ombudsman, the Council for the Safety of Roads, the Ministry of Public Works, the Judicial Power, the Ministry of Economy and the General Archive.

As part of the CPPC Questionnaire, respondents were asked to describe participation at all stages of the policy cycle. Figure 4.2 shows the results obtained from the 14 cases received.

Figure 4.2. **Citizen engagement in the different stages of the policy cycle in Costa Rica (out of 14 responses received)**
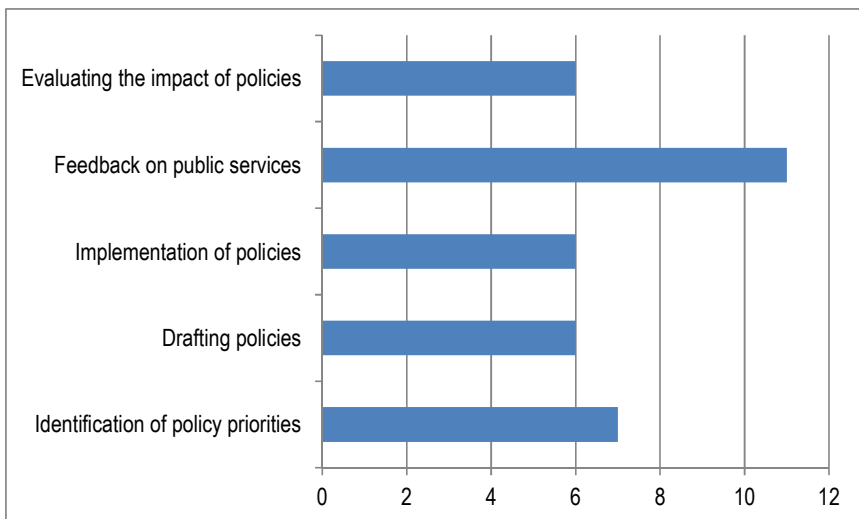

Source: OECD (2015), "Questionnaire on Citizens' Participation in the Policy Cycle" ("CPPC Questionnaire").

In most of the cases, citizens participated in the identification of policy priorities or provided feedback on public services. The data collected leads to the assumption that citizens and CSOs in Costa Rica participate on an ad hoc basis in certain phases of the policy cycle. Workshops and capacity building sessions for public servants could help to spread awareness of the importance of participation at the different stages of the policy cycle in Costa Rica.

In 2015, the OECD, in partnership with the IDB, decided to conduct a Survey on Open Government and Citizen Participation in the Policy Cycle (CPPC). The Survey was sent to Ministries of Health and Finance from OECD member countries, plus one Ministry of choice. Respondents were asked to provide information and data about policies and practices aimed at involving citizens (including civil society organisations – NGOs – and representatives of the private sector) in the policy cycle. Even though the Survey focuses on specific sectors (Finance and Health)[3], its results show some similarities between Costa Rican CPPC practices and practices from Ministries of Finance and Health in OECD countries. For example, across the OECD in these ministries citizens are mostly involved in providing feedback on how public services work (75%). However, the Survey also shows that the involvement of citizens in drafting policies is much higher in OECD countries: almost 70% of respondents report that they involve citizens at this stage. The involvement of citizens in the evaluation of the impact of policies is at approximately 30% in OECD Ministries of Finance and 45% in Ministries of Health, which is similar to the situation in Costa Rica.

Figure 4.3. **Citizen participation in the policy cycle**

A. Ministries of Finance
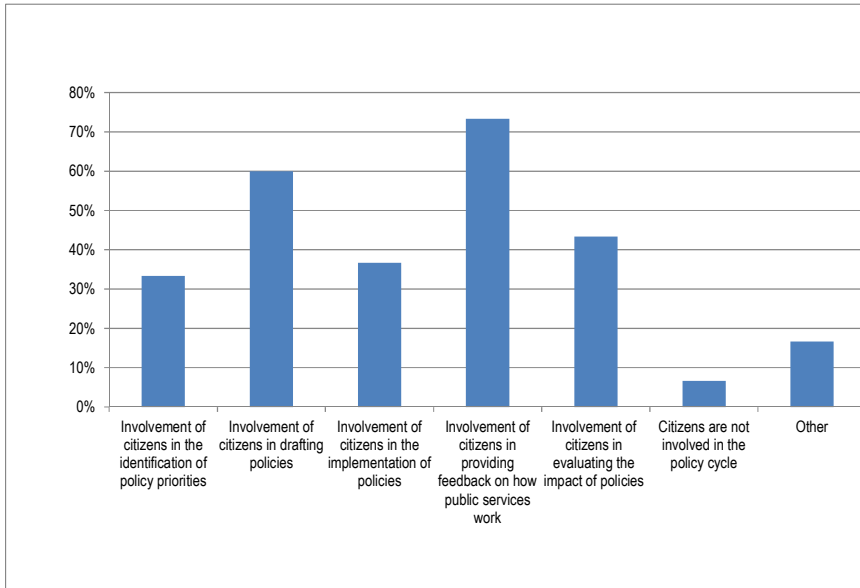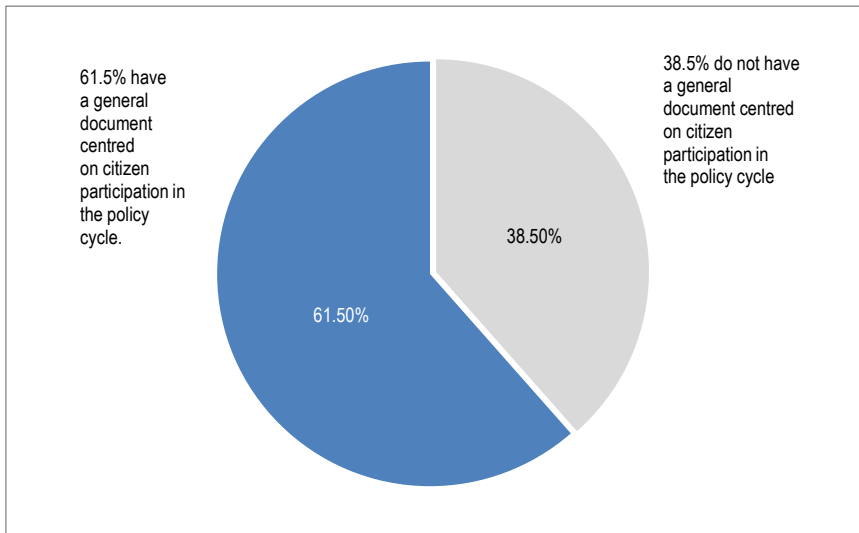

B. Ministries of Health
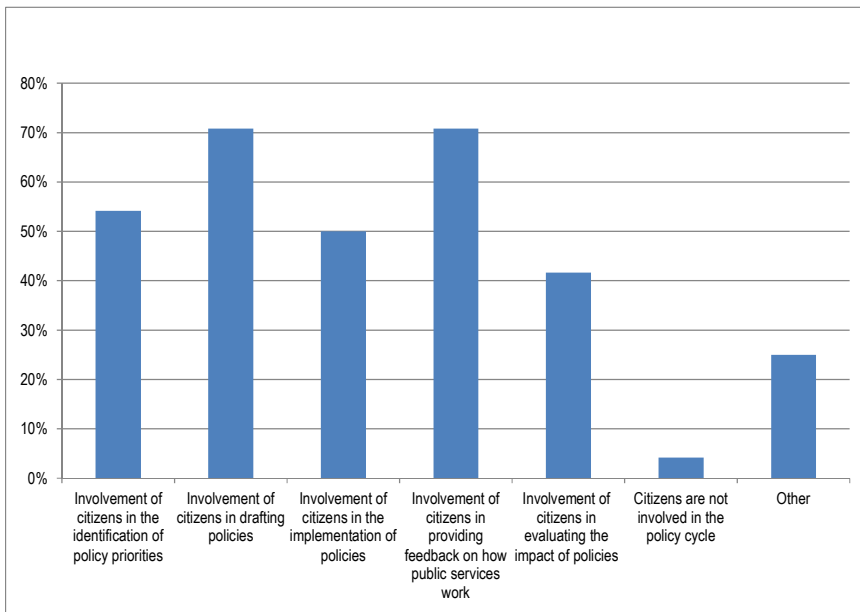
Source: OECD (2016) Preliminary results of the OECD Open Government Survey.

In Costa Rica, the *Tejiendo Desarrollo* project is a good example of how to involve citizens in all different stages of the policy cycle (see Chapter 5). The example and lessons learnt from this project could be shared as evidence of the advantages of involving citizens. A national programme like *Tejiendo Desarrollo* led from the highest political level and demonstrating the concrete impact of citizen participation on people's lives could generate a spill-over effect on other national policies.

An overarching document focusing on citizen CPPC

As shown in Figure 4.4, Costa Rica is among the Latin American countries that lack a general document focusing on citizen participation in the policy cycle, as well as a specific law on citizen participation (see Chapter 2).

Figure 4.4. **Latin America: General document focusing on CPPC**

Source: OECD (2016) Preliminary results of the OECD Open Government Survey from Latin America and the Caribbean.

According to the preliminary results of the Survey, the situation in OECD Ministries of Finance and Health varies (see Figure 4.5). Out of a total of 25, seven Ministries of Finance stated that they did not have an overarching document on Citizen Participation in the Policy Cycle, while six reported having such a document. On 12 occasions CPPC was included in or regulated by another national document. Out of a total of 22 Ministries of

Health, seven reported that they had an overarching document on CPPC, while 14 used the existing national document and only one ministry did not have any document to support CPPC.

Figure 4.5. **Ministries that have an overarching document on CPPC**

A. Ministries of Finance

B. Ministries of Health
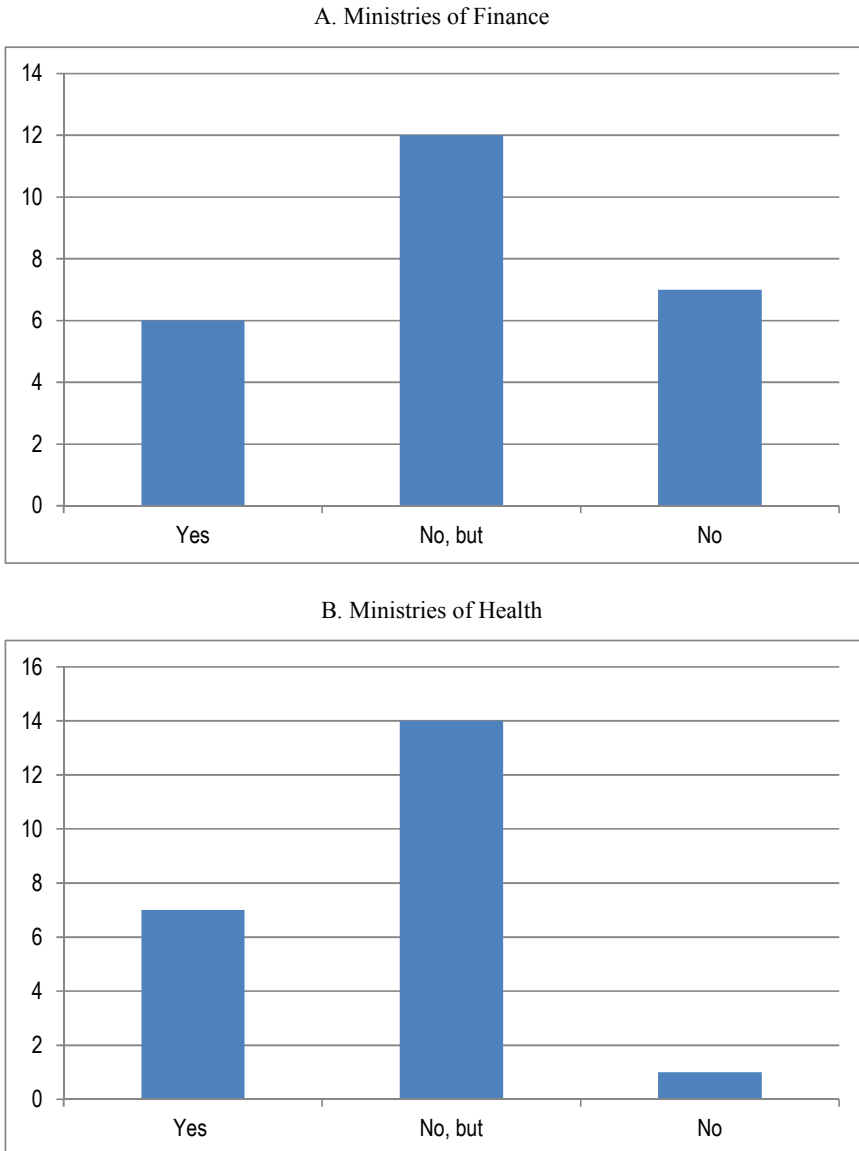
Source: OECD (2016) Preliminary results of the OECD Open Government Survey.

An overarching document to support CPPC can one take a variety of forms, including that of a strategy, a policy, a law, an internal directive/circulaire, a guide, or a manual. Costa Rica could develop a specific overarching document on CPPC. The document should include a description of specific tools to involve citizens in all phases of the policy cycle and elaborate on the impact of citizen participation practices on the quality and responsiveness of the services delivered. The document developed by the government of Austria is a good practice which the Costa Rican government could build on in order to design its own overarching document (see also Chapter 2).

Box 4.4. **Standards for public participation in Austria**

The Government of Austria has developed a strategy to strengthen public involvement in decision making.

The Austrian government believes that effective public involvement in decision making needs rest on a foundation of good organisation, and it **has developed Standards of Public Participation to help public servants conduct high-quality participation processes.**

CSO's and other stakeholders were involved in drawing up the standards, which include elements such as: making information available, fostering open and inclusive policy making, fostering integrity and transparency and improving service delivery. In addition, two e-government applications were created to facilitate public participation, one for public employees and one for citizens.

In order to mobilise citizens, businesses and civil society, there have been several public-private dialogues on reform concerning important issues like education or science, involving different civil society organisations.

Source: OECD (2011), *The Call for Innovative and Open Government: An Overview of Country Initiatives*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264107052-en.

As described in Chapter 2, even though Costa Rica lacks an overarching document on CPPC, the country has managed to create various mechanisms to ensure citizens' involvement in public affairs. Some institutions have created ad hoc or permanent mechanisms that are not necessarily legally codified, but that have been used by citizens to influence the decision-making processes at the national and local levels. Chapter 2 recommends passing of a law on citizen participation, which would constitute the overarching document on CPPC.

Elevating this document to the level of a law would increase its potential to permeate institutions at both the national and local levels. The law on citizen participation approved by the Colombian Congress in 2015 (see Box 4.5) can be considered a good practice by OECD standards.

Box 4.5. **The Colombian Law for the promotion and protection of the right to democratic participation**

The objective of Law 1757 from 2015 is to promote, protect and ensure the different modalities and mechanisms of the citizens' right to participate in the political, administrative, economic, social and cultural spheres in Colombia. Article 2 stipulates that any development plan must include specific measures aimed at promoting participation of all people in decisions that affect them and support the different forms of organisation of society. Similarly the management plans of public institutions should make explicit the way in which they will facilitate and promote the participation of citizens in their areas of responsibility.

The law also created the National Council for Citizen Participation, which will advise the national government in the definition, development, design, monitoring and evaluation of the public policy on citizen participation in Colombia. The council is made up of the following representatives: the Minister the Interior and the National Planning Department from the National Government; an elected governor from the Federation of Departments (states or provinces); an elected mayor from the Municipal Federation; members of victims' associations; a representative of the National Council of Associations or Territorial Councils for Planning; community confederation; the Colombian University Association; the Colombian Confederation of CSOs; citizen oversight associations; trade associations; trade unions; peasant associations; ethnic groups; women's organisations; the National Youth Council; college students; disability organisations; local administrative bodies. The heterogeneous composition of the council ensures that several groups of society are represented in the council and guarantees that all voices are heard.

Under this framework the law appointed the Ministry of Interior as the organ in charge of the public policy co-ordination on citizen participation with the support of the National Planning Department at the national level and the secretariat to be determined from the departments and municipalities.

Among other functions, the National Council for Citizen Participation must design and implement the national system for citizen participation as a mechanism to articulate instances, spaces, subjects, resources, instruments and actions for citizen participation; permanently evaluate participatory state offers to suggest or propose merging or modification of existing bodies and mechanisms for citizen participation; propose incentives in order to encourage private sector investment in programs, policies and plans for the promotion of citizen participation.

This same law on citizen participation in Colombia defines participatory budget practices as a process to ensure equitable, rational, efficient, effective and transparent allocation of public resources that strengthens the relationship between the State and civil society. It is also a mechanism by which regional and local governments promote the development of programs and plans for citizen participation in the definition of their budget, as well as in the monitoring and control of public resource management.

Finally, some incentives were created by law to increase citizen participation mechanisms and promote innovation at the national and local level:

Box 4.5. **The Colombian Law for the promotion and protection of the right to democratic participation** *(continued)*

- Creation of the national award for citizen participation given by the Ministry of Interior every year to the best practice in the country.

- Publication on the web-page of the Ministry of Interior every six months of a successful story of citizen participation, explained in detail to increase the chances of replication.

- National Award for citizen participation at the local level, an event that will be broadcast by the institutional TV channel and feature the mayor and governor of the local government that stand out for their support and practical experiences of citizen participation and the successful development of participatory budgeting exercises.

- A national week for citizen participation every year in February with educational, cultural and artistic activities, accompanied by social and political acts, as well as accountability sessions.

- Municipalities that promote citizen participation will have more points in the comprehensive analysis of performance of municipalities under the framework established by the National Planning Department.

Source: Presidency of the Republic of Colombia (2015), "Law 1757 from 2015", Presidency website, http://wp.presidencia.gov.co/sitios/normativa/leyes/Documents/LEY%201757%20DEL%2006%20DE%20JULIO%20DE%202015.pdf (accessed in March 2016).

The objective of participation

In order to determine why citizens were involved in these activities, the CPPC Questionnaire included the question: What was the participation case used for? Respondents had the following possible answers: a strategy, a policy, a law/regulation, a public service, other. Figure 4.6 presents the final results.

Figure 4.6. **The objective pursued by Costa Rican entities by including citizens**
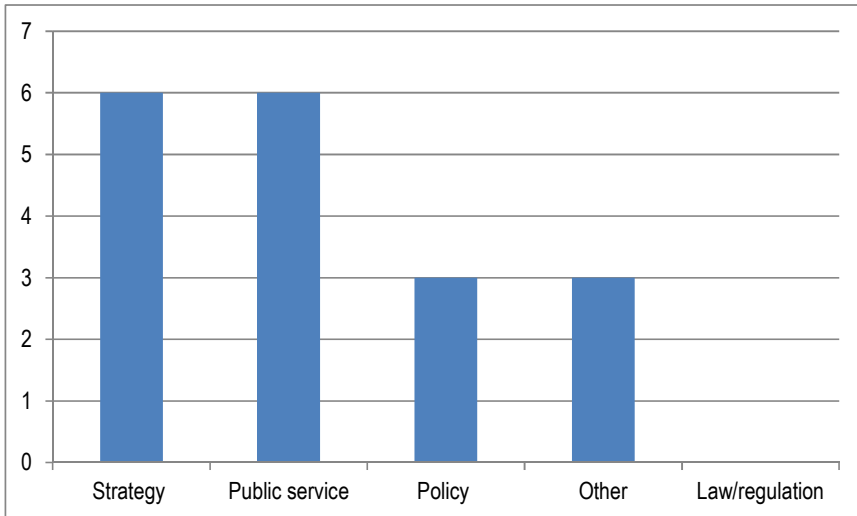
Hence, citizen participation practices in Costa Rica have focussed on "Strategies" and on how public services are delivered to citizens. Good practices include "*Por mi Barrio*", a web application of the Ministry of Finance, the open data website of the Municipality of Palmares and the virtual city of the Ministry of Economy. The focus on IT tools and instruments in the first OGP Action Plan (see Chapter 3) might have contributed to a proliferation of ICT-based solutions, leaving some other important elements of open government outside of the national discussion.

The graph also shows that there seems to be limited participation in the design of public laws and regulations in Costa Rica. None of the 14 cases received intended to include citizen participation in drafting a law or a regulation. This could partly be explained by the fact that the "usual procedure for approving a bill in the National Assembly in Costa Rica is quite lengthy and can take much longer if you enter into negotiations with the parties involved or affected by it" (FALLAS, 2007). Paradoxically, Costa Rica guarantees several spaces in which public and private actors can suggest changes or reforms to existing draft laws. This problem is exemplified by the fact that Costa Rica has so far not been able to pass an access to information law.

OECD experience shows that consultation on laws and regulations improves the quality of rules, increases compliance and reduces the enforcement costs for both governments and citizens subject to rules. It also increases the information on which policy decisions can be based, making available empirical information for analytical purposes, and it helps to assess the impacts and minimise costs for all parts involved (OECD, 2005b). The government of Costa Rica could build on the several guidelines created by the OECD in terms of public consultation and concrete OECD experiences in order to canalise its efforts to include citizens in drafting laws and regulations more efficiently.

Based on the good practices from its members, the OECD has developed a document on Guidelines on Regulatory Consultation (see Box 4.6).

Box 4.6. **Guidelines on Regulatory Consultation**

Below is an extract from the Guidelines on Regulatory Consultation focusing on evaluation methods. When developing a monitoring mechanism, it is important to ensure that the following questions have been addressed:

- Is there a monitoring mechanism in place to evaluate the quality of the consultation process and outcomes of the consultation?

- Does the monitoring process include a tracking document that reports when/how stakeholders' comments are taken into account?

- Is there a mechanism in place that makes sure to adequately use the input received?

- Is feedback provided to the stakeholders?

- When issuing the final regulation, have policy makers indicated whether or not they agree with the comments received?

- Is the protection of confidential information and personal data received from stakeholders during consultation guaranteed?

- How many stakeholders have been reached?

- Have the tools and methods to reach out to stakeholders been appropriate?

- Was there an equal opportunity for all stakeholders to take part, and was the process easily understood by stakeholders?

- Was the timetable respected?

- How much time and resources have been spent; did the costs exceed the initial expectations?

Source: OECD (2012), "Regulatory Consultation: A MENA-OECD Practitioners' Guide for Engaging Stakeholders in the Rule-making Process", OECD, Paris.

The experience of the government of Belgium provides a concrete example of how citizens can be involved in the design, creation and formulation of laws and regulations through advisory councils, roundtables and special websites (see Box 4.7).

Box 4.7. **Citizen consultation for laws and regulation**

In Belgium, public consultations regarding particular policy proposals have become increasingly common. Both Flanders and Wallonia have launched initiatives to strengthen citizen participation.

The Flemish practice of policy making traditionally comprises a lot of consultation. The creation of new strategic advisory councils has further formalised this approach. These councils, which include academic experts, civil society stakeholder groups and private sector organisations, formulate advice on policy proposals and draft legislation. This is a transparent way to address their concerns regarding policy initiatives and proposals.

In Wallonia relevant initiatives include roundtables with companies to discuss ways to cut red tape for business. Another notable initiative is the *Ensemble Simplifions* ("Let's Simplify Together") Plan, dedicated to cutting red tape across the board. The public were consulted on the design of the plan, and during its implementation, particularly through a special website, www.ensemblesimplifions.be.

Source: OECD (2011), *The Call for Innovative and Open Government: An Overview of Country Initiatives*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264107052-en.

Evaluation of the participatory approaches in Costa Rica

The CPPC Questionnaire also asked if the citizen participation case involved any kind of evaluation mechanism (see Figure 4.7). Evaluation, in economic development terms, is the systematic determination of significance and progress of a policy, programme or projects in causing change. It is distinct from monitoring, which is defined as the process of collecting evidence for evaluation. Evaluation is a critical component of policy making at all levels (OECD, 2005a). Evaluation provides governments with the means to improve service delivery. Evaluation has the dual function of providing a basis for improving the quality of policy and programming, and serving as a means to verify achievements against intended results. Evaluation can provide the answer to the question: "Are we doing the right things and are we doing things right?" (OECD, 2005a).

Figure 4.7. **Do you do any evaluation of participatory mechanisms (Costa Rica)?**
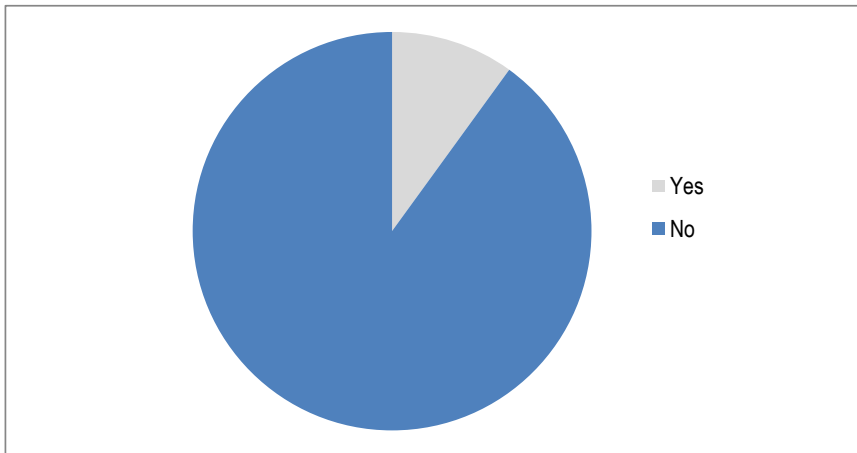
Figure 4.7 shows that only 1 of the 14 cases received by the OECD Secretariat included a mechanism to evaluate the approach used for citizen participation. The preliminary results of the Survey show that OECD Ministries of Finance and Ministries of Health conduct more evaluations on their initiatives than those Costa Rican entities that replied to the survey. Out of a total of 25 Ministries of Finance, ten do not perform any type of evaluation, and out of a total of 22 Ministries of Health, seven do not conduct evaluations, as shown in Figure 4.8.

Figure 4.8. **Ministries that carry out evaluations**

A. Ministries of Finance

B. Ministries of Health
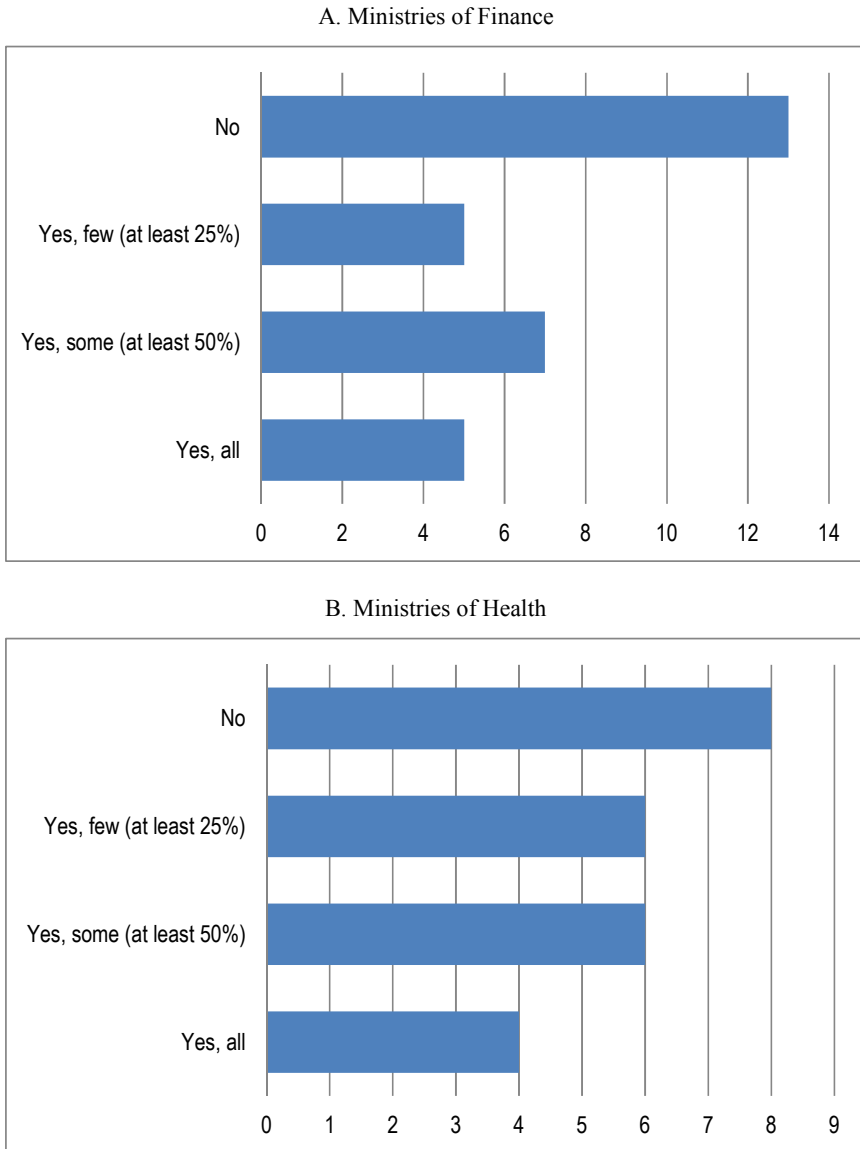
Source: OECD (2016) Preliminary results of the OECD Open Government Survey.

The OECD (2005) report, *Evaluating Public Participation in Policy Making*, recognises that there is a striking imbalance between the amount of time, money and energy that governments in OECD countries invest in

engaging citizens and civil society in decision making and the amount of attention they pay to evaluating the effectiveness and impact of such efforts. That a significant "evaluation gap" exists is hardly surprising. If public engagement in policy making is a recent phenomenon and evaluation is itself a relatively young discipline, then it may safely be said that the evaluation of public participation is still very much in its infancy.

The same publication offers strategic guidance for policy makers and senior government officials responsible for commissioning and using evaluations of public engagement. It provides an indication of the key issues for consideration when evaluating public participation and offers concrete examples drawn from current practice in eight OECD countries.

The evaluation of CPPC initiatives can take a variety of forms such us: a) internal assessment; b) surveys of citizens that have taken part in the consultation; c) surveys of the general public on the quality of the policy on which a consultation was organised; d) independent assessments conducted by CSOs; and e) independent assessments conducted by private companies. In OECD Ministries of Finance and Health the most commonly used mechanism is internal assessment (Figure 4.9).

Figure 4.9. **Evaluating CPPC initiatives**

A. Ministries of Finance
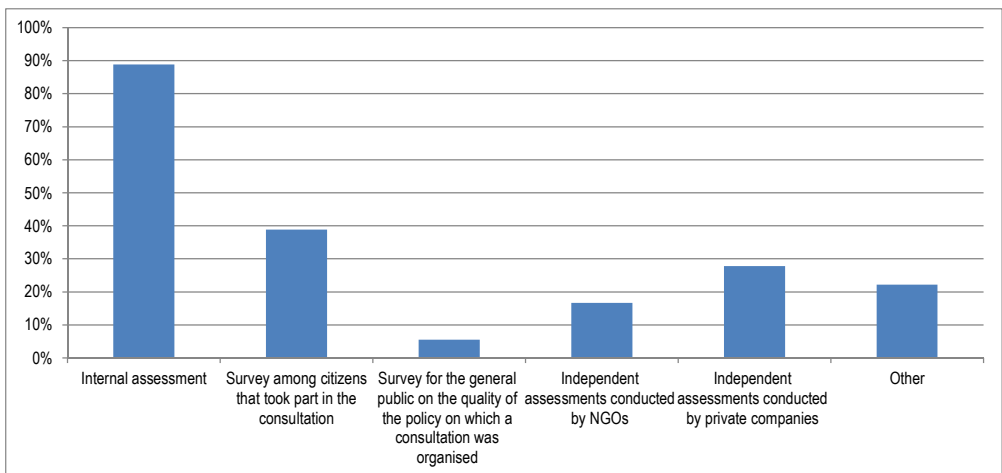
B. Ministries of Health
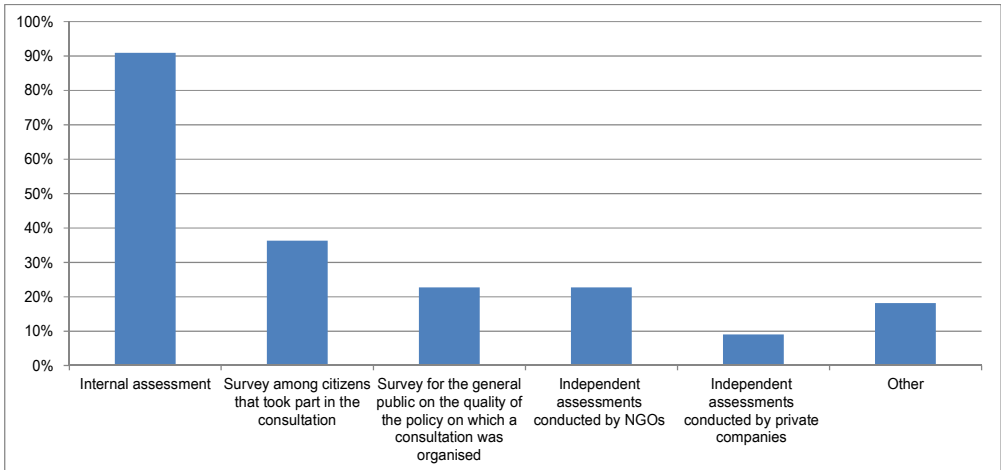
Source: OECD (2016) Preliminary results of the OECD Open Government Survey.

Box 4.8 presents some key questions to be asked when developing an evaluation mechanism. Costa Rican institutions, CSOs and civil society organisations could make use of them in order to start evaluating their CPPC initiatives and to start creating a national strategy to evaluate public participation.

Box 4.8. **Preparing to evaluate public participation: A checklist of key questions**

1. What is the object of evaluation?

   – Information provision

   – Consultation

   – Public participation

   – The use of electronic tools

2. What is the purpose of the evaluation?

   – To find out whether objectives were reached? (i.e. audit)

   – To adjust the process under evaluation? (i.e. management)

   – To document experiences? (i.e. learning)

Box 4.8. **Preparing to evaluate public participation: A checklist of key questions**
(continued)

3. Who is commissioning and who is conducting the evaluation?

  − The government service directly concerned

  − Other government services (e.g. internal audit unit, evaluation unit)

  − External oversight bodies (e.g. parliament, supreme audit institution)

  − Others (e.g. civil society organisations, think tanks)

4. If participatory evaluation is to be used, how will it be conducted?

  − Participation in formulating questions

  − Participation in answering questions

  − Participation in analysing the results

  − Participation in using the results

5. What methods will be used?

  − Surveys

  − Interviews

  − Observation

  − Reviews of documentation

6. How is the evaluation to be organised?

  − How much will the evaluation cost?

  − How long will it take?

  − Who will receive the evaluation results? (e.g. only the commissioning body, the public)

7. How are the evaluation results to be communicated and used?

  − Is there a communication strategy?

  − Which communication channels are to be used?

  − How much will it cost to disseminate the results of the evaluation?

  − Will the evaluation results be used? How?

Box 4.8. **Preparing to evaluate public participation: A checklist of key questions**
(continued)

8. Does a policy on the evaluation of citizen engagement exist?

   − Do general guidelines for evaluation exist?

   − Are specific guidelines for evaluating citizen engagement being developed?

   − How is capacity for evaluation being built within government? (e.g. recruitment, training, partnerships).

Source: OECD (2005), *Evaluating Public Participation in Policy Making*, OECD Publishing, Paris, www.oecd.org/gov/evaluatingpublicparticipationinpolicymaking.htm.

As shown in Figure 4.10, OECD Ministries of Finance and Health do evaluations mostly on outputs and outcomes, with fewer efforts made to evaluate impact and cost-benefit. However, it is worth highlighting that the ministries in question have put in place mechanisms to communicate the results of their evaluation and that the information collected is in most cases used to improve services delivered.

Figure 4.10. **Focus of evaluation**

A. Ministries of Finance
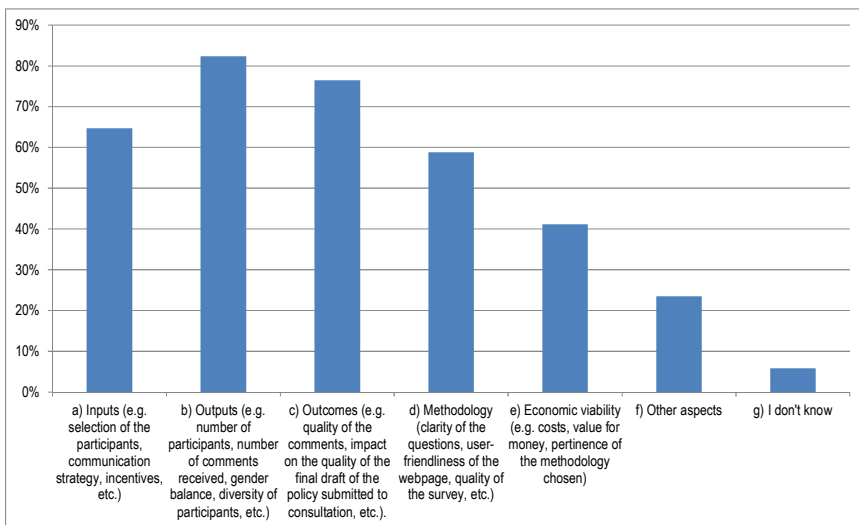
Figure 4.10. **Focus of evaluation** *(continued)*

B. Ministries of Health
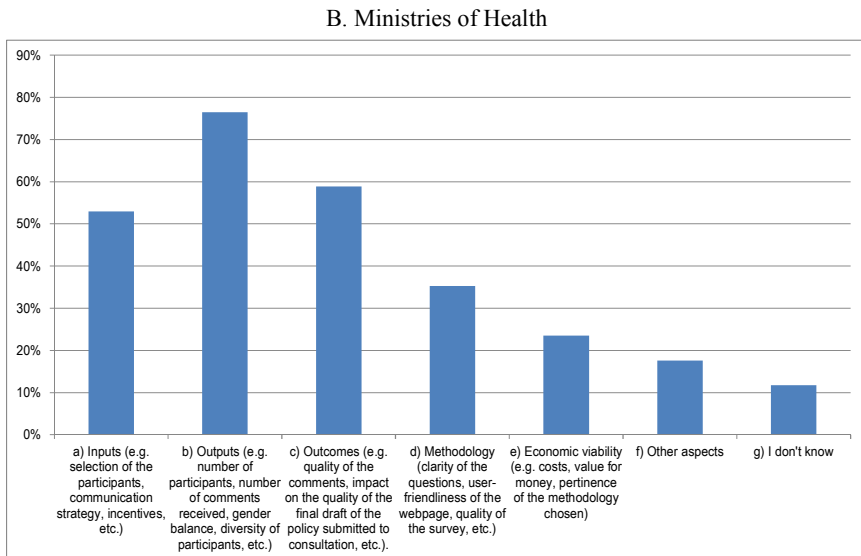
Source: OECD (2016) Preliminary results of the OECD Open Government Survey.

Costa Rica could learn from evaluation mechanisms created in OECD countries. For example, the chapter on "An evaluation framework for information, consultation and public participation" of the publication *Evaluating Public Participation in Policy Making* (OECD, 2005a) includes the evaluation of a pilot project to initiate dialogue and citizen charters in Sweden (see Box 4.9). These and other concrete examples could give the Costa Rican government ideas on how to initiate pilot projects to help it build a future evaluation strategy. The government of Costa Rica should ensure that the results of future evaluations are published and will be used to improve public services.

Box 4.9. **Sweden: Evaluating a pilot project to initiate dialogue and citizens' charters**

In January 2001 the Swedish Government commissioned a number of agencies dealing with citizens and private companies to participate in a pilot project involving service charters and dialogue, as part of a government initiative called "Public Administration in the Service of Democracy – an Action Programme". The objective was to adapt the service of the agencies more closely to citizen needs and to clarify what citizens and private companies can expect from the agencies. Improving the quality of public services and developing participation mechanisms would in turn help to generate public trust in democracy and democratic institutions.

Box 4.9. **Sweden: Evaluating a pilot project to initiate dialogue and citizens' charters** *(continued)*

About 21 public agencies were invited to take part in the project. Among them were such large organisations as the national tax board, the police, the social security board, the migration board and regional authorities. Project activities were co-ordinated by the Swedish Agency for Public Management (SAPM) and the National Council for Quality and Development (NCQD). The agencies taking part in the project were expected to:

- Develop and publish a Citizens' Charter – a service declaration that gives clear, relevant and binding information about the range of services and level of service.

- Conduct a continuous and systematic service dialogue with citizens and businesses. Establish internal processes for dealing with complaints and the external feedback of customer surveys and citizen consultations. Use modern ICT for these purposes.

- Integrate the views of citizens and businesses in the development their own activities.

The pilot project lasted two years. Each of agencies taking part were requested to evaluate its own experience and report back to the government by the end of 2001, and then to conclude with a final evaluation in 2003. From the beginning it was specified that the project as a whole should be evaluated at the end of the trial period, which would lead to recommendations as to whether service dialogue and charters should be introduced throughout the public administration.

The evaluation was intended to provide the government with the basis for deciding whether the pilot project should be continued and extended – a decision that is clearly of great significance to the entire public sector. The 21 agencies decided to do a participatory evaluation, as this was thought to be the best way to create learning and to provide decision-making support throughout the pilot project. A working group was established to co-ordinate data collection and to draw conclusions of an evaluative nature. The working group regularly reported to the whole group of agency in plenary sessions. The full report was published in 2003 by *Statskontoret* (Swedish Agency for Public Management), but is only available in Swedish. The evaluation concluded that service charters were welcomed by the public and by many in the organisations, but that they had to be connected to planning and management. The evaluation contains many detailed operational lessons on how to introduce service charters and improve service dialogue.

Source: OECD (2005), *Evaluating Public Participation in Policy Making*, OECD Publishing, Paris, http://www.oecd.org/fr/gov/evaluatingpublicparticipationinpolicymaking.htm.

The population groups targeted in the citizen participation cases

The CPPC Questionnaire also inquired about the targeted group of citizens at whom each of the citizen participation initiatives was aimed, obtaining the following results: in total, youth (six projects), the elderly

(four) and minorities (four) were the most frequently targeted population groups (see Figure 4.11). Further efforts could be made by the government of Costa Rica and civil society organisations to include women and people with disabilities in the policy cycle.

Figure 4.11. **Number of groups involved in citizen participation cases in Costa Rica**
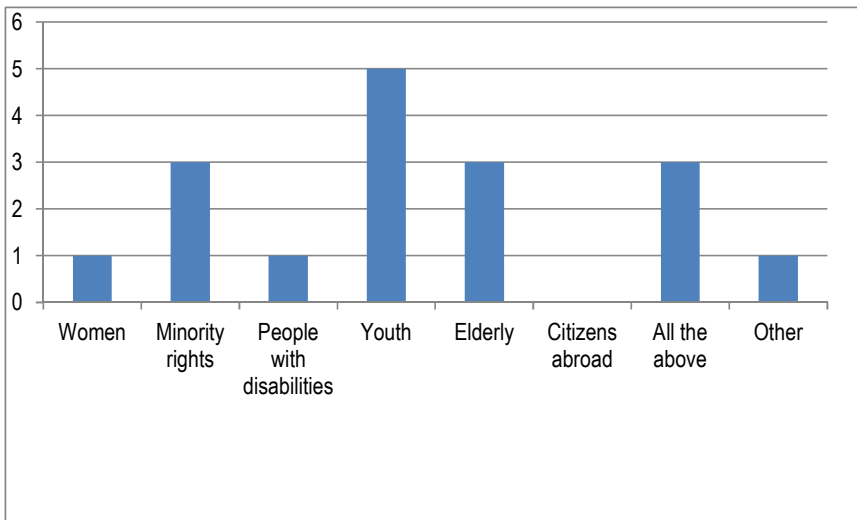
As shown in the graph, most cases involved different groups of the population. In some cases, underrepresented groups such as indigenous populations were involved in the decision-making processes.

As shown in Figure 4.12, the situation in OECD Ministries of Finance and Health is quite similar. They pay most attention to marginalised groups.

Figure 4.12. **Involvement of different groups**

A. Ministries of Finance
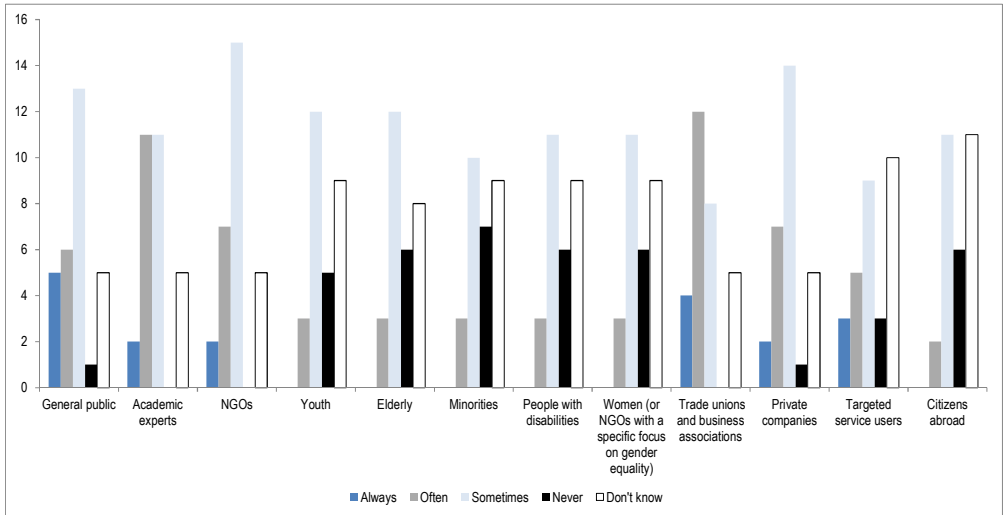
B. Ministries of Health
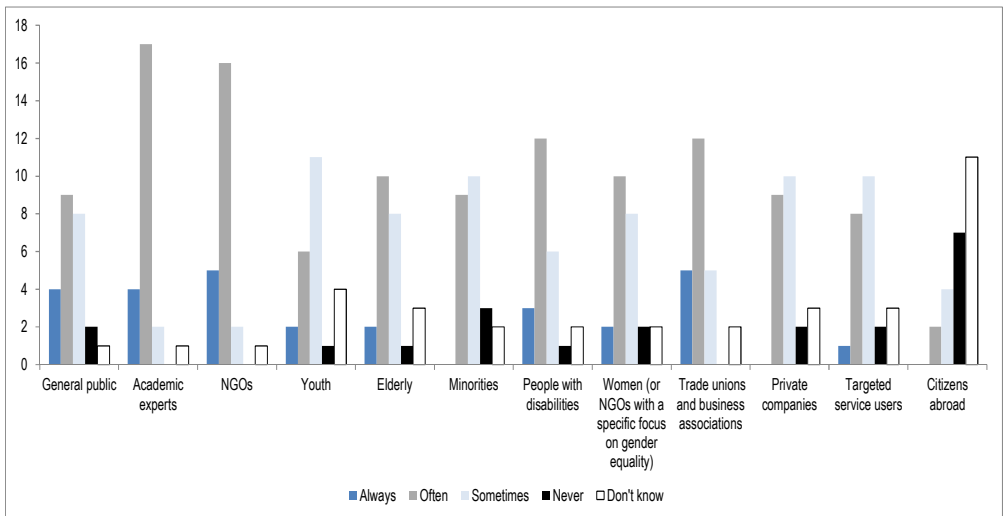
Source: OECD (2016) Preliminary results of the OECD Open Government Survey.

The Costa Rican government is currently implementing various mechanisms to guarantee the rights of indigenous communities. As shown in Figure 4.11, the government has demonstrated its political commitment to

attracting the involvement citizens and particular groups, including the indigenous communities. Under the co-ordination and leadership of the Deputy Minister for Political Affairs and Citizen Dialogue of the Ministry of the Presidency of Costa Rica, the current administration has put in place a strategy to increase the dialogue between the government and the indigenous communities. The purpose is to build an agenda that guarantees indigenous communities' human rights and a better provision of services in their territories (see Box. 4.10).

Box 4.10. *Red Indígena Bri Bri-Cabecar* (RIBCA)

The national census of 2011 recorded a total of 2.4 % indigenous population, equivalent to 104 143 people in Costa Rica, of whom 63 825 are settled in 24 indigenous territories that were created by a law that stipulated that indigenous reserves are located in six provinces, with the exception of the province of Heredia, which despite not having established indigenous reservations has indigenous peoples residing in its territory. The 8 groups are located in 24 indigenous reserves that cover an area of approximately 350 000 hectares, all differentiated by their culture and language. Today six languages are spoken by these communities: Bribrí, Cabécar, Guaymi, Teribe, Brunca and Guatuso-Maleku.

The Network of the Indigenous Bri bri-Cabecar (RIBCA) Communities was founded in 2005 to promote the integration of the two indigenous territories of the Atlantic Region of Costa Rica. Based in the Talamanca canton of the province of Limón on the Southern Caribbean coast of Costa Rica, the Network strives to empower and strengthen the organisational representation of the Bribri and Cabecar communities. The Network's initiatives are aimed at improving the communities' living conditions and their institutional bargaining leverage with respect to the government in the areas fundamental rights and effective political participation of the indigenous population. Moreover, the Network has brought people together to fight for respect, the right to land ownership, the right to be recognised as indigenous and to strive for development while respecting their own traditions (*Alianza Mesoamerica de Pueblos y Bosques*, n.d.).

The RIBCA joins together eight indigenous territories in the Atlantic area: Talamanca Bribri, Talamanca Cabecar, Kekoldi, Tayni, Telire Nairi Awari, Alto Chirripo and Bajo Chirripo. Six of these areas are located in the province of Limon, and the others in the province of Cartago. This network represents 34% of the country's indigenous population, people numbering about 35 909.

In all, 21 public institutions and 8 Integral Development Associations (*Asociaciones de Desarrollo Integral*) have participated in several meetings with the representatives of the indigenous communities by using what the government has called a Human Rights Approach, generating broad participation and inclusive processes and involving different age groups such as youth, adults, seniors and women's groups.

Box 4.10. *Red Indígena Bri Bri-Cabecar* **(RIBCA)** *(continued)*

The strategy has helped to: a) increase levels of legitimacy of the work done between the Government and indigenous people; b) bring about the joint construction of processes and projects; c) implement a dynamic of co-ordinated and systematic action between the government and indigenous people; d) increase awareness of the challenges and problems faced by indigenous communities.

Sources: Leyla Alpízar Pereira, Flor Artiaga Artiaga (2009), Universidad de Costa Rica, "Inclusión de la Población Indígena Bribri y Cabécar en la Sede Limón", www.intersedes.ucr.ac.cr/ojs/ index.php/intersedes/article/view/220; Gobierno de Costa Rica gobierno.cr/red-indigena-bribri-cabecar- establece-canal-de-dialogo-con-el-gobierno/.

The fact that the process is being led by the Deputy Minister for Political Affairs and Citizen Dialogue of the Ministry of the Presidency of Costa Rica lends the initiative greater legitimacy and visibility. Something similar occurred in Peru with the creation of the National Office for Dialogue and Sustainability in 2012 (see Box 4.11). The National Office is institutionally located within Peru's Presidency of the Council of Ministers (PCM). Its main task is to mediate between the indigenous communities, the government and the private sector (OECD, 2016). The government of Costa Rica could build on the Peruvian experience in order to include underrepresented groups in national discussions on policy priorities.

Box 4.11. **National Office for Dialogue and Sustainability in Peru**

In July 2012, Peru's President Ollanta Humala committed to changing the management of national conflicts through new initiatives that were aimed at reducing social tensions. The first law President Humala signed was the Law of the Right to Prior Consultation of the Indigenous or Native People (*Ley del Derecho a la Consulta Previa a los Pueblos Indígenas u Originarios*), requiring mining, energy, and logging companies to consult with indigenous and rural communities about projects planned in their territories, which had been the source of much social conflict. The law brings Peru into compliance with the International Labour Organization's (ILO) Convention on Indigenous Peoples, which Peru ratified in 1993.

To further pursue Peru's goal of reducing social conflicts, the *Oficina Nacional de Diálogo y Sostenibilidad* was created through decree 106-2012-PCM in October 2012. It is a specialised technical body within the Presidency of the Cabinet (*Presidencia del Consejo de Ministros*, PCM); and is responsible for:

- Leading the process of dialogue involving the different social actors, representatives of private and public organisations as well as officials at various levels of Government, to channel citizens' demands and provide a solution for the settlement of disputes, differences and conflicts and for meeting the expectations of the population.

Box 4.11. **National Office for Dialogue and Sustainability in Peru** *(continued)*

- Enhancing co-ordination with the Executive and other levels of government for the prevention and management of disputes, differences, social conflicts and the expectations of the population, as well as defining policies and strategies in this area.

- Strengthening functions related to research, prevention, dialogue, promotion and management, so that the social conflict policy established by the Government is fully carried out and is comprehensive, consistent and sustainable;

In its methodology, the *Oficina Nacional de Diálogo y Sostenibilidad* has classified conflicts as follows:

- Difference: Conflict of judgment or opinion - "cognitive conflict" - which occurs when one party believes that (an)other (s) has (have) come to the wrong conclusions about facts. It is fundamentally a clash of opinions.

- Controversy: Opposition of interests or positions regarding a fact, an action or a decision. An interest is an objective or goal which a social group pursues, while one position is the vision or representation that the group has been forged. Both revolve around a fact, concrete action or decision.

- Social conflict: A dynamic social process in which two or more interdependent parties perceive that their interests are opposed: incompatible goals, resource shortages and interference of the other party to achieve its own goals; and initiate actions that may constitute a threat to the governance and / or the public order, and for whose resolution state intervention is required, with the government exercising its capacity as a mediator, negotiator or guarantor of rights.

The *Oficina Nacional de Diálogo y Sostenibilidad* has three main forms of intervention:

- Prevention: is done before the outbreak of the social conflict or before it escalates.

- Treatment: occurs when the social conflict is expressed openly and may have even reached a crisis. When this occurs, the Office seeks to de-escalate it, trying to channel it toward a solution through dialogue and negotiation.

- Monitoring: monitors and follows up on the established mechanisms for conflict resolution (roundtables, working groups, etc.). The purpose is to identify new potential problems that eventually lead to the resurgence of the conflict.

One example of its *modus operandi* is the use of "spaces for dialogue" as a preventive tool and to address conflicts. These roundtables are defined as "a mechanism for citizen participation and consensus building", whose purpose is to institute a process to help create a climate of confidence among potential actors involved in a conflict, in order to reach better understanding of their interests, positions and needs, and thus arrive at mutually beneficial arrangements (ONDS-PCM, 2014). Between July 2012 and July 2014, the country had 156 "spaces for dialogue" divided into roundtable, working groups, multi-sector commissions and other modalities, helping to solve 98 cases of social conflicts.

Box 4.11. **National Office for Dialogue and Sustainability in Peru** *(continued)*

The *Oficina Nacional de Diálogo y Sostenibilidad* approach
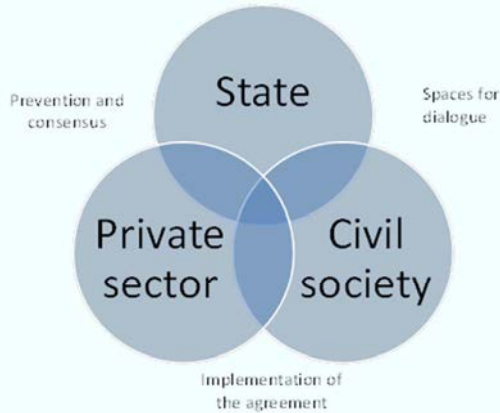
Source: OECD (forthcoming), *Peru: Implementing Integrated Governance for Inclusive Growth*, OECD Public Governance Reviews, OECD Publishing, Paris.

The recent efforts of the Costa Rican government should be maintained and communicated widely in order to increase their visibility. It is important to show the concrete impact of these measures in order to ensure that certain projects will last beyond the current administration.

Citizen participation in the National Development Plan

The previous National Development Plan 2011-14 "María Teresa Obregón Zamora" (MIDEPLAN, 2010 was based on four axes: a) social welfare; b) citizen security and social peace; c) the environment and land use regulation; and d) competitiveness and innovation. Citizen participation and open government policies were mentioned in the introductory remarks, but were not considered a fundamental pillar of the plan as a whole.

The new National Development Plan 2015-18 includes open government policies as a key pillar and instrument to generate development. It promotes a new style of development based on three pillars:

- the promotion of economic development and quality employment

- the fight against poverty and reduction of inequalities

- **open, transparent, efficient government to fight against corruption**.

In line with these pillars, the government of Costa Rica established nine principles that guide the new development model, including four key components of open government policies (in **bold**).

- **citizen dialogues**

- solidarity

- environmental sustainability and risk management

- equity and gender equality

- responsibility

- ethics

- **accountability**

- **transparency in public management**

- **universal accessibility**.

The NDP recognises that "moving towards a new model of development based on equity requires citizen participation as a substantive condition, in the field of information, opinion and decision making" (MIDEPLAN, 2015). The active participation, of different actors including CSOs and citizens, is seen as a necessary condition to achieve the goals of the NDP. The NDP recognises the need to promote new citizen participation mechanisms. It states that the System for National Planning should generate initiatives and strengthen the existing mechanisms and instruments to promote an organised participation in public spheres and matters (MIDEPLAN, 2015).

For example, in the field of education, the government has taken on a commitment to implement mechanisms for dialogue and citizen participation aimed at improving the state of education in the country. Similarly, in the field of risk management and adaptation to climate change, the NDP recognises the important role of citizen participation in monitoring the flow of rivers in rainy seasons, identifying possible areas in which flooding or landslides are more likely to happen and developing emergency plans, evacuation and early warning strategies. Figure 4.13 presents the citizen participation component of the NDP.

Figure 4.13. **Citizen participation component in the NDP**

Vision

A supportive and inclusive country that guarantees the welfare of present and future generations, in which people participate and trusts an institutional democratic, transparent and effective system

Promote economic growth and generate quality employment

Fight poverty and reduce inequality

An open, transparent and efficient government that fights strongly against corruption

Values: Honesty, transparency, equity, **citizen participation**, innovation, ethics, efficiency, service vocation, patriotism, respect for diversity

Mission: Govern promoting sustainable, innovative, equitable and participatory development on the basis of ethical and effective governance

Citizen participation and regional and local impact

Source: MIDEPLAN (2015), "Costa Rica National Development Plan 2015-2018", www.mideplan.go.cr/component/content/article?id=1273.

The NDP acknowledges recent efforts to create more spaces to encourage citizen participation in Costa Rica (MIDEPLAN, 2015), such as:

- Passage of the Law for the Promotion of Social Equality of Women *(Ley de Promoción de la Igualdad Social de la Mujer)*.

- Reform of the Electoral Code introducing gender parity and alternation of directly elected public officials. It fixed a quota of 40 % woman candidates on the lists for district, cantonal and provincial elections and established that political parties should include the necessary mechanisms to ensure the participation of women in their statutes.

- Direct participation of young populations in the National System of Integral Protection *(Sistema Nacional de Protección Integral)*.

- Creation of the mechanism of popular referenda, through a Law approved by the National Assembly. This mechanism has only been

used once in 2007 to approve the free trade agreement with the United States.

- Office for processing and supporting popular initiatives.

- Creation of the *Contralorías de Servicio,* of which there are many throughout the Costa Rican public sector, as an internal control agency.

- Office of the Consumer Advocate within the Ministry of Economy *(Oficina de la Defensa al Consumidor).*

- At the Cantonal level, formulation of plans for the development of local human resources.

- Citizen oversight teams for auditing public management at the local level.

Citizen participation in the design of the NDP

In the process of designing the NDP, the government made substantial efforts to strengthen the participatory dimension (OECD, 2015b). The consultation and active participation of the various agencies and sectors responsible for implementation, as well as of civil society organisations and citizens in the design of the plan, was seen as a way to ensure the sustainability of the proposal and boost compliance with it. More than 100 authorities participated in the development of the plan, including sectorial technical secretariats and officials of multiple institutions, which gave substance to the sectoral proposals to be developed at national and regional level within the context of working groups that met for five months (MIDEPLAN, 2015).

However, while the efforts to involve all relevant public sector stakeholders in the drafting of the plan were clear and praiseworthy, the participation of citizens and CSOs remained quite limited. Citizens should play a more active and important role in designing, overseeing and controlling the implementation and evaluation of the NDP.

The OECD Public Governance Review of Costa Rica said that "consultation principles should be adopted throughout the public sector, to ensure that citizen participation goes beyond the initial development of the National Development Plan, already quite limited in terms of design. Such consultation principles would help policy makers to make the right judgments about when, with whom and how to consult" (OECD, 2015b). Consultation mechanisms should be put in place as part of the process for the design and implementation of future national development plans. This will ensure more participation from citizens and civil society organisations

in building the plan for the next four years. At the same time, the future Methodological Guide for Social Dialogue (as will be discussed in the section on OGP commitments below) could be used as a mechanism to involve citizens in future national development plans.

One of the main challenges seems to be the connection between the high-level principles and goals of the plan on the one hand and the different strategies, plans and programmes that have been developed by public institutions on the other. In the coming months, it will be important for the CoG, and in particular the office of the Deputy Minister for Political Affairs and Citizen Dialogue in the Ministry of the Presidency, to focus on reinforcing the links between the NDP, the National Open Government Strategy and the various policies, institutional plans and initiatives designed and implemented by all relevant public actors at the national and subnational levels.

Citizen participation in OGP Action Plans

The following section presents citizen participation mechanisms outlined in the Costa Rican OGP Action Plans. It analyses the procedure used in the creation of the first and second action plan regarding citizen participation and involvement in the design, implementation and evaluation of the commitments.

Limited levels of citizen participation in the first OGP Action Plan

Process

As discussed in Chapter 3, the process that culminated in the first Costa Rican OGP Action Plan (AP) was led by the Digital Government Secretariat, which in February 2013conducted outreach activities aimed at disseminating the Open Government Partnership's (OGP) mission among civil society and government officials. The Secretariat presented a draft action plan to the public, consisting of 19 commitments that focused on how to improve service delivery and publication of government data. The draft plan was available for online consultation until 8 March 2013, and public agencies, civil society, academia and the private sector had the chance to make suggestions and comments regarding the presented commitments.

Costa Rica Integra, Transparency International's chapter in Costa Rica, and the *Instituto de Prensa y Libertad de Expresión* (IPLEX) were among the stakeholders that participated in the post-first draft comment process. The whole process was enriched by the participation of Peruvian and Mexican representatives from the Presidency of the Council of Ministers

and Peru's Working Group in the work of the OGP and the OGP Technical Secretariat, as well as the Federal Access to Information and Data Protection Institute (IFAI) from Mexico. The four agencies shared lessons learned and organised several meetings with civil society representatives and government officials from Costa Rica (Martínez, 2013).

However, the process of including different stakeholders took place after the Digital Government Secretariat had drafted the commitments. Under these terms, the participation and consultation of civil society organisations and citizens was limited, as they did not take part in the design of the proposal. Their intervention was ex-post and limited to a commenting exercise. A truly inclusive process should include all stakeholders at all stages of the action plan cycle.

Citizen participation in the implementation of the first OGP Action Plan

Costa Rica's first OGP Action Plan (2013-14) featured some small citizen participation elements. The government aimed to include civil society in the process mainly through three approaches:

- First, support and diffuse the knowledge of the recently created platform "En Tiempo" (In Time).

- Second, empower the population through access to information and participation tools.

- Third, implement the project on "*Seguridad Ciudadana Digital*" (Digital Security for the Population).

The "*En Tiempo*" online platform was created to increase the transparency and accountability of inquiries by citizens. The population could track potential delays of their petitions to the administration. The platform and the connected application "*silencio positivo*" (positive silence), which allowed citizens to prove a positive resolution of their requests when the administration had not replied to them in a certain time, went offline in mid-2014 because it was not actively used by the population.

The platform "*Yo Propongo*" (I Suggest) was intended to move toward the goal of empowering, an objective shared by the institution of participation mechanisms in the judicial sector. Prior to their implementation, civil society was already hailing the initiatives as having great potential for the inclusion of the population. The initiative was supposed to be integrated into the civil society web portal (www.gob.go.cr). However, this was never done.

The third approach bringing about increased citizen participation focused on citizen security. The government developed an application called "*Seguridad Publica Cr*". The application warned citizens of potential risk areas and included pictures of the most-wanted criminals. Moreover, it created the electronic system for small arms control. Today, the application is available for Android and iPhone, providing advice on security matters, reporting incidents, showing the location of police stations and publishing reports in real time. This application has great potential and could be used to publish more information such as crime and conviction statistics by region.

As discussed in Chapter 3, the report issued via the Independent Reporting Mechanism (IRM), recommended increasing both the quality and quantity of civil society involvement in all stages of the OGP process, carrying out consultations outside of San José, and including activities that involve CSOs that are not part of the *"Red C"*. Apart from the lack of involvement of civil society in the process, the commitments in the first Action Plan led by the Digital Government Secretariat were marked by their focus on open data and on the creation of digital platforms to inform citizens in different areas (see Chapter 3). Even though the plan underlined the importance of citizen participation by including it as a main objective in the introductory remarks, initiatives were limited to the first type of participation in which the state provides information, in this case through the platforms *"En Tiempo", "Yo Propongo"* and *"Seguridad"*. As discussed above, "information" is a one-way relationship in which the government produces and delivers information to be used by citizens, but where their involvement in policy design, implementation or evaluation is limited or inexistent.

The plan's focus on open data and IT applications generated some other projects that are worth mentioning, for example the Open Data Portal of the Municipality of Palmares (see Chapter 5). The platform is aimed at informing citizens about the local government's work through an easily accessible web page (see Box 4.12).

Box 4.12. **Municipality of Palmares: Open Data Portal**

The municipality of Palmares, located in the Alajuela province, has developed a platform on its website to provide detailed information on its government's work. As part of a strategy led by the Costa Rican national government, the municipality has built its own municipal open data page (datos.munipalmares.go.cr), where any citizen can access first hand municipal information regarding:

- finance and budgets

- real estate taxes

- land and population by district

- building permits and business licenses

- recycling campaigns and waste removal

- education results and statistics

- health and diseases reported

- transit operations, law infringements and accidents

- maintenance of cantonal roads done by the Technical Unit for Road Management

- municipal public procurement.

All this information is accessible on line and can be shared via social networks such as Facebook, Twitter, Google+ and InShare. All the information can also be downloaded in two different formats, which allows citizens to work with these data and integrate them into other data bases.

Through the web page www.munipalmares.go.cr/ citizens have the possibility to make payments or complete administrative procedures, request appointments, check the status of an applications made authorities of the municipality and obtain all the forms required for a particular procedure.

Recently, the web page planificacionpalmares.jimdo.com/ has been used as an online tool to promote citizen participation in the creation of the *Plan Cantonal de Desarrollo Humano Local 2016-2026,* the document that will establish the public policies of the districts that make up the municipality during this period and will focus on four different topics:

1. sports, health, recreation, culture
2. urban and community Infrastructure
3. environment, public services
4. citizen security and coexistence.

This participatory approach is sponsored and financed by MIDEPLAN, the University of Costa Rica and the Municipality of Palmares, and it was expected to last through April 2016. The strategy to build a medium-to long-term plan to address challenges and problems is slated to involve citizen participation in several workshops that will be held in different districts, as well as an assessment activity and a final presentation.

Source: Municipality of Palmares, http://datos.munipalmares.go.cr/home/, www.oas.org/es/sap/dgpe/pub/OEA-Gobierno_Municipal_Abierto.pdf.

Hence, like many other OGP member countries, Costa Rica has experienced difficulties in defining a process to design its commitments under its OGP AP. As shown in the following section, some of these challenges regarding the process were tackled in the design of the second OGP Action Plan, although others remain.

The second OGP Action Plan: Learning from the previous experience

As mentioned in Chapter 3, the process carried out to design the commitments made under the second OGP Action Plan was significantly more inclusive and participatory (it for instance included more than 20 public hearings*)*. It is undeniable that certain improvements were made by the government of Costa Rica, not only in terms of the process, but also as regards the content of the commitments. This section analyses the five specific commitments that were made regarding citizen participation and provides recommendations to ensure their implementation and boost their potential impact.

Citizen participation in the implementation of the second OGP Action Plan

The second OGP Action Plan considers active participation by citizens to be a cornerstone of the search for efficient and effective public management. At the same time, citizen oversight and active participation are essential parts for development at the local and the national level. Table 4.3 presents the five commitments included in the final AP that directly concern citizen participation.

Table 4.3. **Citizen participation commitments in the Second OGP Action Plan**

Title	Main objective
1. Training and dissemination processes of citizen rights within the framework of Open Government	To empower citizens and to train those who hold public positions
2. Citizen service education and training activities for public employees	To improve the service offered to the public in the context of open government, through inductive mechanisms
3. Protocol for dialogue with sectors and populations	To establish the minimum guidelines for the social dialogue between the executive branch, sectors and populations, necessary for a dynamic collaborative construction of agreements, negotiations, information, consultation and evaluation by the public
4. Dissemination of Citizen participation policy of the judicial power	To spread strategies of the judicial power regarding citizenship integration as the main focus of its actions
5. Tools and mechanisms for promoting citizen participation	To define and strengthen the permanent tools, and mechanisms of citizen participation and dialogue, and promote spaces for joint construction in the search for collective solutions

Source: Author based on the Second OGP Action Plan.

The first commitment is especially important for Costa Rican society because the country has the lowest percentage of citizen participation in Latin America. Low levels of participation can partly be explained by the lack of knowledge among citizens regarding their rights and the existing mechanisms. Elaborating educational mechanisms to raise awareness of citizens' rights within the framework of open government can help to empower citizens and to train those who hold public offices, and this can have a transformative impact on citizen participation levels. The case of the Association of Social Communicators *Calandria*, a Peruvian civil society organisation (see Box 4.13) is a good example of how simple campaigns can empower citizens.

Box 4.13. **Calandria: Communicative and educational campaigns for citizen participation**

Calandria, in partnership with CSO's and social organisations in Peru, promotes communication campaigns composed of a series of actions intended to mobilise citizens and increase their awareness of the importance of participation. The campaigns included activities in public squares, workshops, partnerships with the media, production of training materials, capacity building sessions and promotion. The following are some of the campaigns that have been carried out by this civil society organisation:

- "*El mundo está cambiando, cambia tu también*"(The world is changing, you change too) aimed at increasing awareness of the rights of women and the need to change the values and common sense that have been harming their development.

- *"Porque del dicho al hecho, aún hay mucho trecho"* (There's a big difference between saying and doing) sought to generate debate about the contradictions between the modern discourse of equal opportunities for women and traditional practices that hinder the full realization of their rights.

- The campaign "on equal terms" promoted more and better participation of women in municipal elections, to increase their political participation in local government. It was the first time that the gender quota was applied.

- "Choose now, watch later" aimed at strengthening citizen co-responsibility in government and public management by promoting citizen oversight, monitoring and evaluation.

- *"Todos eligimos, juntos vigilamos"* (We choose together, we watch together) was implemented in 20 departments in the framework of regional and local elections to promote continuity in the management processes of development and governance arrangements. A contest was held for young people, who carried out advocacy, citizen orientation and mobilisation activities through various channels of communication.

Source: Municipality of Calandria, www.calandria.org.pe/exp.php?id_secc=3&id_subsecc=43&id_exp=5.

It is worth highlighting the fact that the first commitment considers inter-institutional co-operation and co-ordination between the Ministry of the Presidency, the Ministry of Public Education, the Ministry of Culture and Youth, the Vice-ministry of Peace and the Institute for the Promotion of Democracy of the Supreme Tribunal of Elections as a way to ensure an effective implementation of policies. However, the commitment does not explain the concrete mechanisms that will be used in order to empower citizens. The next step requires the definition of concrete actions such as capacity building sessions and workshops. It will be particularly relevant to ensure the implementation of this commitment at the subnational level. Changing the habits of civil servants and opening their minds as to the importance of citizen participation is a fundamental part of the shift from the idea of citizens as an obstacle to the idea of citizens as partners.

The second commitment regarding education and trainings in citizen services for public employees could generate a moderate impact if implemented correctly. In order to enrich the implementation process, it is fundamental to include citizens' views, criticisms and comments on how they feel that they are being treated in public institutions and how services are being delivered. Citizens could also participate in the evaluation of the activities delivered.

The third commitment calls for the creation of a Methodological Guide for Social Dialogue, which is to take the form of : a) a general diagnostic procedure that applies different national and international experiences, b) the elaboration of the proposal with the mechanism for dialogue and c) the implementation of the final guide with a capacity building session and pilot programmes. The Ministry of the Presidency should ensure the participation of citizens in the three different phases. The final guide could be included in the future law on citizen participation. Once the guide is in use, it would be interesting to publish the results of the dialogues and start building a platform on good citizen dialogue practices.

Regarding the fourth commitment on disseminating the Citizen Participation Policy of the Judicial Power, it is worth highlighting that under this commitment the executive power has agreed to work with another branch of the state. This alliance is another example of the ongoing efforts in the country to move towards an open state (see Chapter 2).

The purpose of the fifth commitment is to define and strengthen the permanent tools and mechanisms of citizen participation and dialogue, and to promote spaces for joint construction in the search for collective solutions, and it calls for four specific actions: a) implementation of civic laboratories; b) strengthening of the Houses of Justice; c) strengthening of participatory mechanisms in the productive sector and territorial

development; d) adding indigenous communities to the initiative *Dialogando para el Buen Vivir*. Even though these are all important actions, the implementation of the commitment should start by defining all those informal mechanisms of participation that already exist in Costa Rica. Some of them could be merged with the three previously mentioned, and others could also be given the support of the central government to ensure certain levels of institutionalisation.

In all of the five commitments, the role citizens play in the evaluation is limited or non-existent. After increasing the participation of citizens in the design of the second Action Plan, all commitments should now also involve citizens in the implementation and in the evaluation phases. For example, the government of Mexico has implemented noteworthy measures to inform the public on the progress made in the implementation of its Action Plans (see Box 4.14).

Box 4.14. **Participation of Mexican citizens in the implementation and evaluation of the OGP Action Plans**

The Government has created the dashboard http://tablero.gobabiertomx.org/ to display and manage the advances and remaining challenges of each of the commitments. The dashboard also offers links to the government bodies in charge of the implementation to allow citizens to obtain further information or points of contact. Moreover, it has established the web portal http://datos.gob.mx/ for most public data that is generated by the government. Additionally, it has created the public opinion website, financed by the Mexican Ministry of the Presidency http://tuevaluas.com.mx/tuevaluas/, where citizens can rate federal public programs.

These portals created by the Mexican authorities offer various benefits in that they enhance transparency and accountability and include citizens in ongoing reform endeavours. Should these portals be properly and actively used by the population, they could well improve political education as well as general trust in the government. The decision by the government to make its progress accessible throughout the implementation and not only in the self-assessment report or IRM also creates pressure on the institutions in charge to ensure the timely realisation and completion of the commitments.

Source: Government of Mexico, http://tablero.gobabiertomx.org/ , http://datos.gob.mx/, http://tuevaluas.com.mx/tuevaluas/.

On 1 February 2016, the government of Costa Rica published an edict in which the Ministry of the Presidency invited all interested citizens to submit their applications to serve on the recently created sub-commissions of the National Commission for Open Government (Article 6 of Decree No. 38994) on: a) Transparency and Access to Information; b) Citizen

Participation; c) Combating Corruption; d) Systems and Platforms; and e) Territorial Development. These sub-commissions will work on the implementation and on monitoring the goals of the National Strategy for Open Government, which was based on the second OGP Action Plan.

The edict defines the requirements that applicants must meet: a) two years of experience in processes related to issues of transparency, anti-corruption, citizen participation, access to public information or open data; b) submission of a letter of intent containing a brief justification for interest in participating in the sub-commissions; c) submission of a CV on which the experience and expertise is clearly detailed and proven. It is positive that the administration defines clear requirements which increase the transparency of the process. Although this is an important first step, the participation in sub-commissions does not obviate the need to involve greater numbers of CSOs in the implementation and evaluation phases.

The government of Costa Rica has made citizen participation a policy priority, and some impressive advances have been achieved. However, citizen participation rates remain low. This chapter has signalled some of the challenges that Costa Rica is facing in its efforts to strengthen citizen participation. The following section presents recommendations to support the government in strengthening citizen participation.

Recommendations

- Increase the existing efforts to **promote a culture of civic engagement and participation in public matters** through communication strategies, consciousness raising and capacity building activities aimed at both public officials and citizens, in order to counter the low participation rate that prevails in the country.

- **Develop a specific overarching policy document on citizen participation in policy making,** including specific tools to involve citizens and civil society organisations in all phases of the policy cycle. This would also be instrumental in supporting the implementation of a new law on citizen participation.

- **Invest in the capacities of all relevant public institutions to implement and evaluate citizen engagement initiatives** and encourage them to systematically report on the outcomes of these evaluations. This would give greater visibility to the impacts of engagement and consultation initiatives, which would encourage more and more citizens to take part in them.

- Increase and streamline the recent efforts of the Costa Rican Government to **actively engage indigenous communities** in the design and implementation of the public policies that directly impact their lives.

- Become one of the first countries in the region, and worldwide, to systematically **include the private sector** in the design, implementation and evaluation of its open government agenda and in the next OGP Action Plan.

Notes

1.   According to the Article 2 of the Law of Co-operative Associations, these are voluntary associations with full legal personality, indefinite duration and limited liability, in which individuals are democratically organised to meet their needs and promote their economic and social improvement.

2.   Solidarity associations respond to specific needs by providing goods and services to improve the quality of life of people in a particular community.

3.   The results can therefore not be directly compared with the CPPC Questionnaire which was based on concrete practices.

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Chapter 5

Open government at the local level in Costa Rica

This chapter examines open government initiatives at the subnational level in Costa Rica. In light of the ongoing decentralisation process and the growing responsibilities of municipalities, the chapter assesses the scattered good practices that exist across the country and offers concrete recommendations on how to further enhance the engagement of citizens in political processes at the local level. The chapter finds that spreading open government to municipalities requires the strengthening of their administrative, institutional and fiscal capacities as well as increased guidance from the Centre-of- Government. To further harness the potential advantages of involving the local level in the process of the establishment of an open state, the chapter recommends including the subnational level in the National Open Government Policy, including more municipalities in the Open Government Partnership (OGP) Action Plan cycles and replicating existing good practices from certain municipalities.

Introduction

For a long time, the global open government movement has focused on the national level. Only in recent years has more attention been paid to open government policies at the local level. Subnational governments have a key role in implementing open government (OG) policies. Local governments are at the forefront of the state and have to play a key role in the move towards an open state (OS). As explained in the OECD Open Government Review of Tunisia (OECD, 2016a) *"Their performance shapes people's perception about the quality of the government as a whole. Their proximity with people and with their needs spurs citizen scrutiny, engagement and participation. Their capacity to pool information about opportunities and challenges facing their community put them in a pivotal role to support business and promote inclusive and sustainable economic development"*.

The defining factor of open government at the subnational level is the advantage of its proximity to citizens and their needs. OG at the local level bears enormous potential to deepen interaction between municipalities and citizens to improve the quality of services provided and enhance trust. Municipalities should see open government as an opportunity (OAS, 2014). New technologies and well-educated citizens mean greater possibilities for co-operation between government and citizens to achieve commonly defined social goals, which represents an opportunity to include new capabilities from society in diagnosing problems, designing and implementing strategies and evaluating results (ibid.).

Hence, local authorities should be open, transparent, accountable, accessible, ready to react to citizens' feedbacks and able to serve as liaisons between their communities and higher levels of government (OECD, 2016a). The experience of the financial crisis and the loss of trust in government prove that the traditional modes of governing, including highly centralised institutions, have neither proven able to meet the challenges of our society nor to contribute to inclusive growth and productivity. Accountability, transparency, citizen participation and openness at the local level can enable the public sector to better face the pressing challenges of our time and achieve goals of interest and benefit to local communities. Open government and citizen engagement can help countries deliver better public goods while improving the capacity of their local communities to engage in democracy and engage in proactive behaviour in relation with public authorities.

In recent decades, local governments in the OECD have become leading actors in citizen action, service delivery and interaction between governments and citizens. Many good practices and social innovations that

exemplify the benefits of open government have emerged from the municipal and regional levels (OAS, 2014).

In the framework of the Peer Review Mission, an OECD delegation of public servants from OECD and LAC countries and OECD officials had the opportunity to visit three Costa Rican municipalities that had been selected by the central government as representative of the country: Esparza, Cartago and Palmares. During the technical meetings, the delegation had the chance to interview senior public officials in charge of open government policies and to review with them some of their best practices in these areas, which will be the focus of this chapter.

The analysis shows that there are competent and dedicated officials in charge of open government, and that the President's priorities in terms of transparency and participation have clearly trickled downwards into the municipalities, albeit in a fragmented and episodic way.

On paper, it seems that the legal and institutional framework could be conducive to open local government. As discussed in Chapter 2, the legal framework for open government at the local level provided by the Constitution of the Republic of 1949, the Municipal Code (Law 7794 from 1998) and the General Law on the Transfer of Competences to Municipalities (Law 8801 from 2010) is in line with that of OECD countries and is conducive to open local government. The Municipal Code, for instance, establishes the Municipal Council's obligation to promote active, conscious and democratic participation of the people in the decisions of the local government and gives a prominent role to popular consultations such as popular initiatives, referenda and town hall meetings. The analysis also showed that – when it comes to open government - municipalities look for guidance from the national government. For instance, the design of laws on access to information and citizen participation would provide this necessary guidance.

In recent years, Costa Rica's municipalities have also started implementing open government practices. Pockets of excellence exist in different areas of open government all across Costa Rican territory. For instance, some municipalities have set up their own digital platforms and open data portals, while others have created new institutional mechanisms for participation, and most are now working on citizen budgets. Municipalities are aware of the digital divide and of the need to improve municipal websites and use of social media, and there are ongoing projects to address these areas.

OECD work on open government at the local level

Across the OECD, subnational governments are closest to citizens and, while the range of services they deliver varies, they are typically the political and institutional place where people and policy meet. Achieving an open state is possible only via active involvement of governments at all levels: open government principles and practices have to become part of public servants' and peoples' DNA. This involves providing the needed capacities and often a complete re-thinking of the interaction between governments and citizens at all levels.

Within the context of the OECD Open Government Project, the OECD has produced ad hoc assessments of the functioning of OG at the subnational level in several countries, including Indonesia, Jordan and Morocco. The OECD Open Government Review of Tunisia, for example, was the first of its kind to include case studies on open government at the local level in the governorates of Sfax and Gabés.

The OECD approach to open government at the local level involves two main elements: the organisation supports local governments in designing their own open government plans, and it provides capacity building and implementation assistance. It also supports the central government in involving local authorities in the design, implementation and evaluation of national open government plans and policies.

The OECD analysis of open government at the local level respects the diversity of subnational governments. Across the OECD, a wide variety of types of local governments exist. All OECD countries have institutions at the municipal level, and most have regional administrations. A smaller number have an intermediate level of government between the municipal level and regional levels (see Table 5.1).

As visible in the table, municipalities are by far the most common subnational administrative level, and data show that many innovations and open government reforms are happening there (OGP, n.d.), which explains the interest in a better understanding of the specific dynamics that take place and how central governments can effectively support them. The analysis in this chapter will focus on open municipal governments because municipalities – or "Cantons" as they are called in Costa Rica – are the only subnational governments with administrative powers in the country (see below). The chapter will discuss how involving the subnational level more in the OG process will be a key element in the advance towards an open state.

Table 5.1. **Number of subnational governments**[1] **in the OECD in 2015**

2014-15	Municipal level	Intermediary level	Regional or state level	Total number of subnational governments
Federations and quasi-federations				
Australia	565		8	573
Austria	2 102		9	2 111
Belgium	589	10	6	605
Canada	4 014		13	4 027
Germany	11 116	402	16	11 534
Mexico	2 445		32	2 477
Spain	8 117	50	17	8 184
Switzerland	2 324		26	2 350
United States	35 879	3 031	50	38 960
Unitary countries				
Chile	345		15	360
Czech Republic	6 253		14	6 267
Denmark	98		5	103
Estonia	213			213
Finland	317		1	318
France	36 681	101	27	36 809
Greece	325		13	338
Hungary	3 177		19	3 196
Iceland	74			74
Ireland	31			31
Israel	252			252
Italy	8 047	110	20	8 177
Japan	1 718		47	1 765
Korea	227		17	244
Luxembourg	105			105
Netherlands[2]	393		12	405
New Zealand	67		11	78
Norway	428		18	446
Poland	2 478	380	16	2 874
Portugal[3]	308		2	310
Slovak Republic	2 927		8	2 935
Slovenia	212			212
Sweden	290		21	311
Turkey	1 394		81	1 475
United Kingdom	389	27	3	419
OECD34	**133 900**	**4 111**	**527**	**138 538**
Peru	**1 671**	**196**	**25**	**1 892**

Notes: 1. Includes only subnational government with general competencies. 2. Netherlands: 403 municipalities as of 1 January 2014. 3. The regional level in Portugal includes only two overseas regions: Madeira and Azores.
Source: OECD (2015b), "Subnational governments in OECD countries: Key data", www.oecd.org/regional/regional-policy.

The environment for open government at the municipal level in Costa Rica

The legal environment for open government at the local level, provided mostly by the Municipal Code, is discussed in Chapter 1. This section looks at Costa Rica's administrative divisions, the decentralisation process and the role played by the Cantonal Councils for Co-ordination and the Community Development Associations.

Costa Rica's administrative divisions

Costa Rica has an area of 51 100 km2 and approximately 4 438 995 inhabitants (*Instituto Nacional de Estadística*, 2009). Due to the geographic conditions, the population is highly concentrated in a limited geographical space of less than 4% of the territory (the *Valle Central*). Approximately 54% of the national population live in an area of no more than 2 000 km2. Like many of its Latin American neighbours, Costa Rica is institutionally a highly centralised country.

As discussed in greater detail in the OECD Public Governance Review of Costa Rica, the country is composed of seven provinces, which are divided into 81 administrative units (municipalities), each of them presided over by a mayor. The lower administrative level includes 423 districts (*distritos*). Only the central government and municipalities have administrative powers (OECD, 2015a). Municipal governments consist of a deliberative body composed of a municipal council and a mayor, both elected by popular vote every 4 years (IDB, 2010). The Cantons do not have legislative powers. The seven provinces are electoral districts used to organise voters and their political representation. Under the Constitution, each province is assigned a central provincial capital without any have special constitutional powers (ibid.). The provinces elect the 157 deputies of the Legislative Assembly (Art. 106 of the Constitution).

Moreover, the planning system of Costa Rica, created in the 1970s, introduced six planning regions which implement territory-specific components of the national development strategy set at the central level. Planning regions host regional development councils which approve, execute and monitor regional development plans.

The decentralisation process

As discussed in the OECD Public Governance Review, Costa Rica's Constitution not only distinguishes between central and local government (i.e. "territorially decentralised public sector"), but also establishes autonomous institutions (Article 188 of the Constitution). As defined in the

Costa Rica Public Sector Organigram (Ministry of National Planning and Economic Policy, 2013), the "institutionally decentralised sector" (as opposed to ministries and their subsidiary bodies) encompasses different types of autonomy. It distinguishes between autonomous institutions and their subsidiary bodies, semi-autonomous institutions, state-owned and non-state-owned public enterprises and non-state public entities (OECD, 2015a). Decentralised entities provide essential services such as health care and electricity for the entire national territory.

For a long time, Costa Rica's decentralisation process focused on the creation of decentralised public entities tasked with the provision of basic services. Nowadays, the resulting fragmentation of the public sector puts pressure on the capacity of the state to design and implement successful national policies and effectively deliver public services (see also Chapter 3). Compared with OECD members, subnational authorities in Costa Rica have a relatively marginal role in policy making and service delivery (OECD, 2015a), with the key functions being assigned to the central level and, in particular, to the institutionally decentralised sector (OECD, 2015a), which accounts for the largest share of public expenditure (OECD, 2015a).

Since 1949, several reforms have aimed at strengthening the role and capacities of subnational governments. The Constitution of the Republic of 1949, the Municipal Code (Law 7794 from 1998) and the General Law on the Transfer of Competences to Municipalities (Law 8801 from 2010, *Ley general de transferencia de competencias a municipios*) are the legal basis of the process of devolution to municipalities. Article 170 of the Constitution, reformed by Law 8106 in 2001, states the following: "The municipal corporations are autonomous. In the Ordinary Budget of the Republic, all the municipalities of the country will be allocated a sum that will not be inferior to ten percent (10%) of the ordinary revenues calculated for the corresponding economic year. The law will determine the competences that will be transferred from the Executive Power to the municipalities and the distribution of the indicated resources". In 2000, for the first time, local representatives (mayors, municipal council members, and mayors of districts) were elected by the people.

However, the municipalities still mostly act within a framework established by the central government. In theory, the passing of the General Law on the Transfer of Competences to Municipalities saw the start of the implementation of the above-mentioned Constitutional reform of 2001. The purpose of the Law was to set the stage for the implementation of the reform of Article 170 of the Constitution, whose goal was to help improve the quality of life of Costa Ricans via transfer of powers and resources from the executive branch to the local level. In the words of the Constitutional Court the law represents, "a comprehensive reform of the executive branch" as it

relates to the constitutional design of its powers, functions and relations with other constitutional bodies, and it affects countless laws. However, the implementation of this reform has not yet advanced significantly (OECD, 2015a).

The responsibilities of municipalities

Compared with the OECD average, subnational expenditure is low in all domains, meaning that Costa Rica's territorial authorities play a marginal role in delivering policies and services to their communities (OECD, 2015a). For the time being, municipalities in Costa Rica are mainly responsible for:

- managing and providing some municipal public services such as waste removal

- setting and collecting municipal fees and taxes

- convening citizens for popular consultations

- promoting participatory and inclusive local development

- advancing local public policies in favour of gender equality (OECD, 2015a).

In addition, municipalities have the authority to define their urban regulatory plans and all guidelines pertaining to spatial planning (ibid.). Tax collection represents the greatest source of revenue for local entities. Municipalities are entitled to collect municipal taxes such as the property tax (real estate), register taxes (patents) and fees for services provided to citizens (waste collection, for instance). In addition to their own taxes, in accordance with the Constitution, municipalities also receive transfers from the central level (ibid.). The government allocates transfers to municipalities based on criteria such as geographical extension, population and position in the social development index (Laws 7755 and 8114).

Cantonal councils for institutional co-ordination (CCCI)

The Cantonal Councils for Institutional Co-ordination (*Consejo Cantonal de Coordinación Institucional, CCCI*) were created by Law 8801 from 2010 to co-ordinate sectoral policies at the municipal level (ibid.). Art. 18 of the law states that CCCIs are "instances of political co-ordination between the various public entities with cantonal representation, in order to co-ordinate the design, implementation and supervision of all public policies with local impact. The councils will be chaired by the Mayor of each municipality."

As of 2015, 51 municipalities – out of the total of 81 – had created their CCCI (ibid.). CCCIs involve representatives from the central government and other (decentralised and central government) public institutions in charge of delivering services at the municipal level, including autonomous agencies. All CCCIs have a technical secretariat that produces a co-ordination plan based on the needs of the municipalities and on the feedback provided by institutional bodies involved in the council. Mayors have the role of facilitating the implementation of these plans. Hence, they act as co-ordinators of other institutions active in the territory they govern (ibid.). MIDEPLAN provides councils with technical support, monitoring and evaluation activities, but not with funds; municipalities have to cover the operating costs of CCCIs (ibid.).

Cantonal councils respond to a key governance need in Costa Rica: they improve the co-ordination among different decentralised institutions and between these institutions and local governments. CCCIs have the potential to become key hubs within the national governance system, but they still face important challenges (ibid.) The OECD Public Governance Review of Costa Rica (ibid.) identifies three key challenges: First, poorer municipalities may lack capacities and funds to create CCCIs. In these cases there is a need for support, at least for the first years of functioning of CCCIs. Second, representatives from public companies and autonomous agencies do not always recognise the technical leadership of local mayors and the CCCI secretariat, which negatively affects the capacity of councils to co-ordinate policies. Third, and most importantly for this Review, the possibilities for citizens to participate in the councils are limited. The involvement of local stakeholders, including private business, was initially ignored by the legislature, which considered the presence of the mayor as sufficient to represent all the instances of local constituencies in a given CCCI. Only recently has the law been amended to give citizens the possibility to play a more active role in these local instances (ibid.).

While the decentralisation agenda falls outside the purview of this review, the current multi-level governance arrangements could be used more effectively to promote open government at the local level. Instances like the Cantonal Councils for Institutional Co-ordination show that there is a need for better co-ordination between all actors involved in the local policy cycle. CCCIs have the potential to become important actors in the promotion of the national open government agenda, and they could become a crucial forum for inclusive and participatory policy making. By representing the views of the local authorities, their inputs in the process that lead to the definition of national policies is as invaluable as it is underutilised at the moment. Moreover, greater involvement of citizens' associations and representatives of the private sector in the meetings and deliberations of the CCCIs would

allow them to integrate their position with that of the main social actors in the territory, hence becoming one of the most important players in Costa Rica's open state agenda.

The Community Development Associations and the National Directorate for Community Development: Key actors in open government at the local level

The National Directorate for Community Development (*Dirección Nacional de Desarrollo de la Comunidad*, DINADECO) is a decentralised institution of the executive branch of Costa Rica. DINADECO was created in 1967 to co-ordinate, promote, guide, and evaluate the process of creating community associations and to ensure their active and informed participation in local development (DINADECO, n.d.). These Associations encourage the co-operation and the active and voluntary participation of the population in economic, social and cultural development at the local level and have become important fora that promote citizen participation in local decision making and service delivery.

The legal basis of DINADECO is the Law on Community Development (Law 3859 from 1967, *Ley sobre el desarrollo de la Comunidad*). Communal Development Associations (*Asociaciones de Desarrollo*) are created by neighbours who share the common goal of social and economic improvement for their communities. Community Development Associations (CDAs) act to encourage co-operation and active and voluntary participation of the population in economic, social and cultural development of the communities. Although the creation of Communal Development Associations is facilitated by DINADECO, which also provides them with training, the associations themselves are constituted as private entities of public law which receive their funding from DINADECO. The Ministry of Finance transfers two percent of income tax revenue to DINADECO, which then distributes the money to the associations, both for concrete projects and to cover their regular administrative costs[1].

Different types of Community Development Associations exist. Integral associations (*asociaciones de primera base*) are organisations that are established with the intention of achieving functional well-being for the people living in the community, while specific associations (*asociaciones específicas*) are created for the purpose of taking concrete actions (such as the creation of a community centre). Integral associations can band together with other groups from same municipality or with those from neighbouring municipalities. These merged groups can come together in federations which, in turn, form the national confederation of development associations.

DINADECO's role is particularly important when it comes to building capacities among Associations. During the period 2010-14, DINADECO trained a total of 31 583 people in different areas.[2] Development Associations' project proposals are presented to the National Council of Community Development (*Concejo Nacional de Desarrollo de la Comunidad*) which is in charge of deciding which of the proposals will be funded. During the period from May 2010 to May 2014, in response to the prioritisation of projects carried out within development associations, the National Council approved funding for 741 community initiatives, equivalent to a total investment exceeding CRC 15 billion. The areas in which the funding was focused were road infrastructures, community security and health, the categories that received most of the total funds.

Co-ordinating the work of Development Associations with the work done by the Municipal and District Council can be challenging. Representatives from CDAs do not have formal representation in the two Councils. However, in some cases, members of the boards of the CDAs hold a public office. In other cases, District Councils have taken the initiative to co-ordinate with local CDAs, e.g. to develop joint projects.

The municipalities also receive funding from the *Partidas específicas* (public resources allocated in national budgets, both ordinary and extraordinary) to meet local, community, regional or national needs (Law 7755 from 1998, *Ley de partidas específicas*). Parts of this funding are transferred to the District Councils, which in some cases co-operate with the CDAs to execute certain projects. However, there is no legislation regulating this.

The existence of community associations is a unique feature of Costa Rica's multi-level governance system. CDAs implement projects that meet specific demands of the citizenry, promote social dialogue and help spread a culture of civic engagement. However, the co-operation between the CDAs and municipalities in planning and policy making and in the implementation of the projects seems to be limited at best. If not improved, the system supporting the CDAs risks becoming a parallel actor at subnational level, with stronger links to the central government and limited integration with the institutional life of the municipalities. DINADECO and the national government are aware of the need to reinforce co-ordination between national planning and local realities and have for instance started working on the National Community Development Plan (*Plan Nacional de Desarrollo de la Comunidad*).

The implementation of open government at the local level in Costa Rica

Over the past few decades, the standard of living in Costa Rica has improved considerably. The digital divide has decreased (International Telecommunications Union, 2014). As discussed in chapter 1, more and more Costa Ricans now have access to mobile phones and the internet (ibid.). All across the country, well-informed and educated Costa Rican citizens are demanding more integrity from their governments, better access to public information and more opportunities to participate in the formulation of development plans and in budget decisions. The pressure put on municipalities to deliver on these expectations is enormous.

In the past decade, Costa Rica's municipalities have started experimenting with modern open government practices. This chapter finds that several good practices exist in different areas of open government all across Costa Rican territory. Some municipalities have for instance established their own digital platforms and open data portals, while others have created new institutional mechanisms for participation and most are working on citizen budgets.

However, the peer review mission also found that, in most cases, the good practices that exist are more isolated islands of excellence than an integral part of the municipalities' *modus operandi*, with weak links to the national open government agenda. Moreover, this assessment is supported by the evidence that so far, no municipality has decided to develop its own open government policy. Overall, it seems that this is mostly due to the fact that the concept of an open government policy - intended as a document that brings together in a single vision a diverse set of related and mutually supportive policies, laws and practices in the areas of transparency, accountability and citizen participation - is relatively new to all levels of the Costa Rican government. This would suggest that it is crucial to better disseminate to the municipalities the current will of the national government to move from an open government to an open state with the support of a national open government strategy. Were the rationale behind this choice to be fully explained, the number of local government that would embrace it would drastically increase.

The OECD fact-finding mission also perceived a lack of information about the impact of the existing practices on various open government areas, such as citizen participation and open data. Monitoring and evaluation of the impact of these initiatives would allow for building the basis for greater impact, which in turn would promote the spread of best practices to other areas of the administration and across the country. MIDEPLAN could play a

key role in promoting a culture of evaluation in the country at all levels of government. In addition, in many cases municipalities appear to lack the human and financial capacities needed to take full advantage of the benefits of open government. Public officials would benefit from more technical support from the national government and the access to ad hoc training in these areas, which would serve to broaden and deepen the impact of the local open government agenda.

Potential to increase the involvement of the local level in Costa Rica's OGP process

The Open Government Partnership is an international platform promoting co-operation between governments. For the time being, only central governments are allowed to formally join the OGP. However, the involvement the local level in open government efforts is increasingly at the forefront of OGP debates. Open government at the subnational level was one of the main topics discussed at the last OGP Global Summit in Mexico City in October 2015, and the OGP has recently launched a "Subnational Government Pilot Program" designed to more proactively involve subnational governments in the OGP and to make it possible to work more closely with cities.

In the elaboration of their OGP Action Plans central governments can and should involve the local level, and concrete commitments can promote open government reforms at the local level. So far, only a very limited number of OGP member countries have involved their local entities in the design of their plans, and commitments to promote openness at the subnational level were nearly absent from the first action plans of almost all OGP members. In the second and third action plan cycles more and more countries are now making efforts to involve subnational entities, and an increasing number of their commitments are aimed at building open local governments. For instance, the United Kingdom's 2013-15 OGP Action Plan includes a Data Transparency Code for local authorities, and Colombia's second OGP Action Plan includes an open government commitment of the department of Antioquia.

As in most countries, the local level was not systematically involved in the design, implementation and evaluation of Costa Rica's first OGP Action Plan. The methodology for designing the plan was rather top-down and did not include co-creation sessions at the local level, nor did it include commitments directly targeted at the local level. According to information received during interviews, the local authorities that were involved participated thanks to their own initiatives rather than because of any active outreach on the part of the central government. For instance, the

Municipality of Palmares participated in the implementation of the country's open data commitment included in the first Action Plan.

The Deputy Ministry of the Presidency has learned from the experience of the country's first action plan cycle and designed an ambitious consultation process at the local level for Costa Rica's second Action Plan. While the second plan does not feature an explicit commitment to open government at the local level, citizens and selected municipalities were actively involved in the process. As discussed in Chapter 3, workshops to design the action plan and receive citizens' input were organised in different regions of the country. Moreover, commitment 12 on the "Transparent Process Management of Infrastructure Projects" mentions municipalities as actors involved in its implementation.

Despite the important efforts the Deputy Ministry and the CNGA have been making to work with certain municipalities, there is still important untapped potential to enhance open government at the local level in Costa Rica's OGP process. For instance, Costa Rica should consider including municipalities more in the open government action plan cycles. Box 5.1 details the role of local governments in Colombia´s recent plan. In Costa Rica's third plan, municipalities should be given the opportunity to elaborate concrete commitments to promote open local governments. Municipalities could be also be given rotating seats in the CNGA. Another way to spread open government principles at the local level would be to guarantee the representation of local governments on the recently created sub-commissions of the CNGA that will be in charge of implementing and monitoring the national strategy. The involvement of municipalities in these sub-commissions could generate concrete value for the private sector and citizens in terms of transparency, accountability and a better provision of local services.

Box 5.1. **Open government at the local level in Colombia's Second OGP Action Plan**

In 2015, Colombia presented its second OGP Action Plan for the period 2015-17. The Plan entails 18 commitments and provides two novelties. Not only did the country work towards enhancing transparency and accountability in the Judiciary, it also extends open government reforms to the subnational level. As laid down in commitment 9, the province of Antioquia commits itself to the development of a transparent and responsible government. This department (*departamento*) already leads in the Transparency Index of "Transparency for Colombia" and the Governor of Antioquia has promised to further advance the open government agenda in his department.

Specifically, the department's aim is to adhere to the principles of the OGP by holding accountability hearings in all 125 municipalities of Antioquia. In these hearings, in which a total of 12 000 citizens shall participate over a period of two years, the municipalities will report on the compliance with the departmental development plan, the results of the Transparency Fairs on contracting as well as the results of Public Agreement signed by the mayors of the municipalities of Antioquia.

Source: OGP (2015), *Colombia Action Plan*, Open Government Partnership, www.opengovpartnership.org/country/colombia/action-plan.

Citizen participation at the local level

In Costa Rica and across the OECD, governments have started responding to the demands of citizens to increase participation in the design, implementation and evaluation of policies in order to regain trust and improve the quality of policies. The OECD Peer Review mission visited the Municipalities of Esparza, Cartago and Palmares and identified a number of good practices in the area of citizen participation. These include citizen budgets and the involvement of youth organisations. While their character, for the time being, seems more exploratory than fully integrated in the national and local development plans and policy-making cycles, they do respond to political priorities in the areas of transparency, the fight against corruption and citizen participation and, as such, have important potential to support the country in its path towards an open state. Different tools exist, (see Box 5.2) and citizens seem to be interested in increasing their interaction with their governments.

Box 5.2. *Tejiendo Desarrollo*: **Inter-institutional co-ordination and citizen participation throughout the policy cycle**

The *Tejiendo Desarrollo* (Weaving Development) programme was created by Executive Decree 38536-MP-PLAN. It is promoted by the Presidency of the Republic, through the Office of the First Lady, the Ministry of National Planning and Economic Policy (MIDEPLAN), the Institute for Rural Development (INDER), the Institute for Municipal Development and Consulting (IFAM) and the National Directorate for Community Development (DINADECO), with the purpose of promoting the development and articulation of inter-institutional actions and citizen participation in the regions, territories, municipalities and communities in the framework of the Network of Territorial Development and Citizen Participation (*Red de Desarrollo Territorial y Participación Ciudadana*).

Tejiendo Desarrollo is a policy framework supporting community-led development processes. The objectives of the network are the following:

- to promote the participation of civil society in development processes
- to articulate the sectoral organisation of the government
- to design policies that respond to the priorities of local actors.

The National Development Plan describes the network and its two key components and two transversal lines of work: to promote development processes in specific territories (10 territories which comprise 34 cantons) and to develop a National Policy on Regional and Territorial Development with civil society participation led by the Ministry of National Planning and Economic Policy. The transversal lines are training (building capacities) and communication.

The component of creating development processes in specific territories includes various stages: preparation and building capacities in territories and institutions, implementation of subnational institutions, construction of agreements and prioritized plans, project management and evaluation of the development process. The process for the formulation of the National Policy for Regional and Territorial Development with Citizen Participation is made up of several stages: **diagnosis, identification of the problem, definition of the target population, approaches, principles, characteristics of the public policy, definition of axes and guidelines, management model, visualization of actors, proposal for the evaluation, monitoring and accountability,** all parts of the policy cycle.

Tejiendo Desarrollo responds to the need of the State to develop strategies, programs and projects that are linked to comprehensive and coherent plans, bodies and instruments from subnational planning (regional, territorial, cantonal, district, municipal), initiatives that respond to the needs and priorities identified by local actors. Given its systemic nature, it is conceived of as an innovative and challenging undertaking that must be taken on by all the institutions of the executive branch. One of the main objectives of the program is to deepen citizen participation in the construction and management of these policies, as well as to generate local capacities as a strategy to ensure more sustainability, ownership and empowerment of stakeholders in the projects.

Source: OECD (2015a), *Costa Rica: Good Governance, from Process to Results*, OECD Public Governance Reviews, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264246997-en.

While the senior officials interviewed showed both technical competence and a clear understanding of the potentialities of open government policies, many of them stressed the need to strengthen the capacities of the rest of the civil service, especially in more operational functions. However, in many cases resources dedicated to capacity building activities are scare. Accordingly, the central government should facilitate the provision of training opportunities for local authorities and focus on effectively implementing the part of its decentralisation agenda that includes the transfer of knowledge to the local level. Next steps could include building capacity for public servants to more actively involve citizens and linking the existing good practices on citizen engagement to local open government plans. Citizen engagement could further facilitate the transition from a "paternalistic" model of state, in which the central government provides a small and standardised basket of basic services to all citizens, to a more advanced one in which services are also tailored to the specific needs of a given local/regional community (OECD, 2015a).

At the same time, Costa Rica's most active CSOs should start considering playing a more active role in promoting the principles and practices of open government throughout the country's civil society movements and citizens. This would increase the interest of local CSOs in these areas, promote greater civic engagement and improve the number and quality of the social accountability initiatives being carried out at the local level. Costa Rican civil society might consider following the example of CSOs of most OECD countries and create a permanent national network to gather together all the third sector actors who are already active or interested in open government issues. With financial support from the central and local government and the donor community, they could hold awareness raising events and capacity building activities for their members at the subnational level.

Citizen participation in the sessions of the Municipal Councils

In Costa Rica, the sessions of the Municipal Councils (*Consejos municipales*) are open to the public, including sessions at which the budget is discussed. Establishing this openness for Municipal Council sessions is an important step in moving towards an open municipality. Prior to the reform of the Municipal Code in 1998 (Article 41), some sessions, including those on budgetary matters, could be closed to the public.

In an initiative to enhance accountability and social control, the Municipal Code also established the obligation to hold public consultations (*audiencias públicas*) on draft regulations affecting areas such as markets, construction or public events (ibid.). During consultation period, interested citizens have to be informed about the content of the regulation and receive

all the information they deem relevant. Article 17 of the Law on Urban Planning (*Ley de Planificación Urbana*, Law 4240 from 1968) adds that the municipality is obliged to publish the information on the time and place where the consultation will be held in the daily newspapers (ibid.).

The reform of the Municipal Code of 1998 also strengthened the role of the District Councils (*Consejos de Distritos*). Article 54 of the Municipal Code assigns the District Councils the role of a watchdog for municipal activities. Moreover, the councils are responsible for proposing the allocation of scholarships, housing, food vouchers and other forms of municipal aid. They may also recommend priorities for public works or the use of communal fees. The District Council's role also includes advancing the participation of citizens and bridging the gap between state institutions, municipalities and citizens.

Citizen budgets

The spending priorities of subnational governments are not necessary aligned with the interests of the people living in a certain territory. Participatory budgeting (or the citizen budget) aims at enhancing citizen participation, fiscal openness and the accountability and efficiency of public spending. Citizen budgets encourage community participation in decision making and allow for the building of participatory management practices based on a new concept of citizenship and inclusion. Box 5.3 contains more information on citizen engagement in the budgetary process.

Some Latin American countries such as Peru and Colombia (OECD, forthcoming; Presidency of Colombia, 2012) have already introduced participatory budgeting at the local level in their legislation. The Costa Rican Municipal Code establishes the obligation for Municipalities "to promote a *participatory and inclusive* local development, providing for the diverse needs and interests of the population" (Article 45 Paragraph h). In 2010, a reform of the Municipal Code that did not pass the Legislative Assembly proposed the creation of the System of Participatory Planning and Municipal Budgets (*Sistema de Planificación Participativa y Presupuestos Municipales*). In January 2016, the congress presented another modification of three Articles of the Municipal Code in order to introduce participatory budgeting at the municipal level. According to the reform, each district (*distrito*) shall include the local population in the design of the municipal budget (Asamblea Legislativa YouTube channel, 2016). The municipalities would be required to publish the outcome of the meetings on budgetary questions in a newspaper. In cases where the municipalities refuse to include the opinion of the population, the *Contraloría* would be allowed to declare the budget proposal void (ibid.).

Even without this proposed modification of the Municipal Code, some Costa Rican municipalities have established participatory budgeting practices. For instance, in Esparza the resources for citizen budgets come from funds allocated to the municipality through the Law regulating Port Activities on the Pacific Coast (Law 8461 from 2006). However, as in most Costa Rican municipalities, Esparza's citizen budget still represents a minor share of the overall budget of the municipality. Similarly, the Municipality of Heredia has developed a participatory budget with a focus on gender equality and universal access. Heredia aims to achieve the following specific objectives through participatory budgeting practices:

- to encourage community participation in local government decision making at through continuous training with a gender perspective

- to improve the efficiency and effectiveness of municipal investment

- to develop projects that contribute to the development of different communities based on social criteria and gender equity

- to strengthen the relationship between the municipality and its neighbours, as well as with civil society organisations

- to improve mechanisms for public oversight and transparency.

Citizen budgets, if done well, have great potential to enhance transparency and accountability. The good practices from municipalities such as Heredia and Esparza should be shared with other municipalities. Municipalities should also start assessing the impact citizen budgets have on people's perception of their respective governments and on the quality of public spending. Municipal governments could then consider progressively expanding the share of citizen budgets over the next years.

Box 5.3. **Introducing engagement elements to the budget process**

The 2015 OECD Recommendation on Budgetary Governance explicitly calls on governments to "ensure that budget documents and data are open, transparent and accessible" and to "provide for an inclusive, participative and realistic debate on budgetary choices".

Over recent years, the trend towards participative budgeting has extended internationally and has been taken up with success in a number of OECD countries. In practice, progress at the national level has been limited to date, with more activities and innovations emerging at the level of cities and municipalities. A notable example is Paris, France where participative budgeting has developed significantly since its introduction in 2014, including in terms of the scale of the budget subject to participation (over €100m a year) and the mechanisms adopted for submitting, selecting and prioritising projects. Among the reasons advancing for participative budgeting is the scope for improved policy outcomes, including:

Box 5.3. **Introducing engagement elements to the budget process** *(continued)*

- enhanced civic engagement and positive impacts on political culture and competences of citizens

- opportunities for greater engagement among disadvantaged and marginalised groups within the society

- fundamental social improvements in some cases (with, for example, evidence of better-focused municipal spending on health care and lower infant mortality rates in Brazilian municipalities)

- support for a broad-based agenda of modernisation and transparency within public administration.

The OECD is working closely with partners and stakeholders, including the Global Initiative on Fiscal Transparency (GIFT) and the International Budget Partnership (IBP) to build upon valuable experiences at local level and assess how they can have relevance at the national level.

Source: OECD (2016b), *Open Government in Indonesia*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264265905-en.

Citizen participation in local planning exercises

The Municipal Code encourages municipalities to involve citizens in municipal planning processes. As mentioned above, Article 5 of the law stipulates that "Municipalities will encourage active, conscious and democratic participation of the population in the decisions of the local government. The public institutions will be obliged to collaborate in order for these decisions to be duly carried out" (Government of Costa Rica, 1998). Additionally, Article 4 asks the municipalities to "promote a local, participative and inclusive development, which contemplates the diversity of the necessities and interests of the population" (ibid.). The aforementioned proposal to create the System of Participatory Planning and Municipal Budgets (*Sistema de Planificación Participativa y Presupuestos Municipales*) from 2010 was aimed at expanding the mechanisms for democratic control of public management in each municipality and encouraging the participation of the population in local planning exercises.

For the time being, the planning of municipalities is governed by a set of regulations scattered in different laws which feature the following instruments: the Municipal Development Plan (PDM), Territorial/Spatial Planning Plans ("Land use plan"), Five-Year Plan (Law 8114 from 2001),

Government Programme of the Mayor, and the Annual Operating and Budget Plan (PAO) (Estado de la Nación, 2007). For instance, Article 17 of the Law on Urban Planning (Law 4240 from 1968) states that before implementing a regulatory plan (i.e. a land use plan), the municipality must convene a public hearing in its official gazette and any additional means, and is required to indicate the location, date and time in order to inform citizens about the project and listen to the observations of concerned neighbours.

The legal framework further obliges municipalities to involve citizens in a great number of specific processes, from education to water management. Table 5.2 summarises the most important of these processes.

Table 5.2. **Areas of citizen participation**

Area	Participation projects at the municipal level- civil society
Water	Consumer Association (*Sociedades de usarios*, ASADAS)
Local roads	Joint Cantonal roads (*Juntas Viales Cantonales*)
Culture	Municipal bands, libraries, cultural centres, Cantonal Commission of Control and Planning of Public Events (*Comisión Cantonal de Control y Calificación de Espectáculos Públicos*), Commissions of Popular Celebrations (*Comisiones de Festejos Populares*)
Sports	Cantonal Commission of Sports
Education	Board of Education (*Juntas de Educación*), School Administration Boards (*Juntas de Administración de Colegios*), Auxiliary Commission for the Defence of the Spanish and Indigenous languages (*Comisión Auxiliar Cantonal para la Defensa del Idioma español e indígena*)
Gender	Municipal Women's Offices (Oficinas Municipales de la Mujer)
Youth	Cantonal Committee for Youth (*Comité Cantonal de la Persona Joven*)
Environment	Specific Projects, Commission for Water Protection in the micro rivers and other initiatives indicated in the environmental laws
Planning services	Public hearings, Planning Services Monitoring Committee (*Comité de seguimiento del plan regulador*)
Risk and emergencies	Municipal and Communal Emergency Committees (*Comités Municipales y Comunales de Emergencia*)
Public safety	Municipal police regulation and co-ordination with communal organisations and citizens
Road safety	Communal Committees of Road Safety

Source: Estado de la Nación (2008), "Ponencia preparada para el Informe Estado de la Región 2008- Evolución del Régimen Municipal en Costa Rica (1999-2006)", www.estadonacion.or.cr/files/biblioteca_virtual/centroamerica/003/Ponencia_Rojas_municipios_CR.pdf (accessed 22 March 2016).

In 2007, the Comptroller General published a study on municipal planning processes which found certain deficiencies in the implementation of the country's quite elaborate legal framework. It revealed that participatory practices in planning and municipal management were not well

established and found that municipalities lack clarity about the processes they are supposed to follow (*Estado de la Nacion*, 2007).

Nevertheless, some municipalities have managed to establish innovative practices in involving citizens in planning exercises. For instance, the Municipality of Palmares is currently working on a new Cantonal Human Development Plan (PCDHL) and a new Municipal Strategic Plan (PEM). The two plans are being elaborated "through a process of participatory strategic planning between local government, public institutions with local presence, community and private organizations, and the active citizenship (individual leaders)" (Municipality of Palmares, n.d.). In this exercise, the municipality is closely co-operating with the Ministry of Planning and Economic Policy (MIDEPLAN). Together with MIDEPLAN and the National University of Costa Rica, the municipality is organising public events and capacity building seminars in its different districts. Palmares' stated aim is to accommodate for the different needs and to promote greater human development in the canton. Citizens had the opportunity to sign up online or via telephone to participate in the different sessions aimed at designing the plan (Palmares, n.d.).

Box 5.4. Objectives of the co-operation between MIDEPLAN and the Municipality of Palmares

- Identify and prioritise strategic areas of local human development and specific actions needed to achieve sustainable development of the Canton of Palmares, including an inventory of related actions, existing resources necessary to facilitate public-private investment in different areas of development proposed .

- Set the challenges and opportunities for local human development in Palmares Canton using planning tools.

- Define mechanisms and procedures to achieve effective integration and participation of civil society in the formulation, implementation and local human development evaluacción Canton of Palmares.

- Guide the activities of public institutions, private organizations and social community involved, both in the short, medium and long term, within the framework of concerted vision and priorities of the local-territorial implementation of this strategy.

- Contribute to the sustainable achievement of better and greater socio-economic and human development of the local residents of the neighbouring city of Palmares in different strategic areas included in the plan conditions.

Source: Municipality of Palmaneres (n.d.), Participación Ciudadana: Plan Cantonal de Desarrollo Humano de Palmares 2016-2026, http://planificacionpalmares.jimdo.com/planes.

At the time of writing, the consultation and participation process in Palmares was still ongoing, and the impact citizens were having on the plan could not yet be determined. Nevertheless, the design of the process looked promising and constitutes an important step forward. The initiative taken by Palmares should be promoted in other municipalities and MIDEPLAN should consider providing guidance and support to more municipalities.

Digital government

Digital government and the use of information and communications technologies (ICTs) can be important tools to bring local governments closer to people, increase public transparency and foster greater participation of individuals in areas of interest to them. Costa Rican municipalities have made advances in using digital technologies for these purposes. Some have created applications to engage citizens (see for example the *Por mi barrio* application of the Municipality of Palmares, Box 5.5), while most Costa Rican cantons are working on their own digital government portals and Palmares has elaborated its own open data portal. Despite these advances, great potential remains to more fully exploit the potential of digital government to increase openness of local governments. Digital government is largely left to the municipalities' IT departments, thereby hindering the strategic use of its full potential. From some isolated islands of efficiency, digital government has yet to spread across the entire national territory.

Open data

Open data has significant potential to create economic, social and public governance value in municipalities. In Costa Rica, the Municipality of Palmares is a pioneer in using open data portals. Palmares is supporting the use of open data in order to ensure transparency in its management, encourage the participation and collaboration of citizens in the development of solutions to problems and ensure quick and easy access to public information. (Municipality of Palmares, n.d.). Through its website, the Municipality offers citizens information on the Canton's budgets, expenditures, statistics, public procurement, salaries, and data about the environment, etc. The website is also connected to social networks and discussion forums.

The OECD team did not receive data on the uptake of Palmares' open data portal. Given that this is a fairly recent initiative of which many citizens might not be aware – despite its important potential - for the time being, its impact might be minor. Palmares should focus on spreading knowledge about the portal. During the OECD Peer Review Mission representatives from the municipality repeatedly stressed the importance of the support that

they had received from the Digital Government Technical Secretariat in the design of their open data portal. In spreading knowledge about the potential of open data and increasing the quality of the data provided, the local government should be assisted by the Ministry of Science, Technology and Telecommunications (MICITTMICITT), which has taken on the portfolio of digital government in Costa Rica. MICITTMICITT should further encourage other municipalities to follow the example of Palmares and should offer capacity-building seminars to local governments on the creation of open data portals.

Digital cities and digital government portals

Many Costa Rican municipalities are working on ambitious digital government portals jointly with the Foundation for the Development of Digital Cities (FUNDECIUDAD). FUNDECIUDAD was established in 2011 and is registered in the Public National Register of the Government of Costa Rica as a not-for-profit organisation. The foundation's mission is to "act as an articulating and transforming agent in the field of information and communication technologies, creating and enhancing technological innovation that allows communities to become digital cities in order for all citizens, equally and without any discrimination, to use modern technological tools to their advantage " (FUNDECIUDAD, 2016).

The foundation is providing support to municipalities that want to create their own digital government platforms which – once established – aim to provide access to public information and tools for citizens to engage with their local representatives. Interviews held in Esparza and Cartago showed the great potential local governments see in using digital platforms and applications to improve citizen participation and foster trust in local administrations. The beta-website presented looked very ambitious. However, it will be important for municipalities to manage expectations and take into account the country's existing digital divide.

Moreover, the Costa Rican Association of Municipalities has signed the so-called MuNET agreement with the Organization of American States (OAS) to strengthen the institutional capacity of local governments through the implementation of solutions for e-government in order to promote socio-economic development in the regions. The objectives of the project MuNET are as follows:

- to strengthen local governments and make their institutions more transparent and effective and provide them with better mechanisms for citizen participation

- to incorporate the participating municipalities of the OAS Member States in the knowledge society through the consolidation of stable and skilled teams responsible for designing and implementing an e-government strategy for municipalities

- to use the opportunities offered by information and communications technology to increase the level of efficiency with which municipalities operate

- to increase the level of transparency in municipal management by incorporating ICT in municipal management and the management of relations with citizens

- to promote citizen participation in matters of public interest by facilitating access to information and municipal representatives through multiple mechanisms, including those offered by ICT.

According to the website of the Association of Municipalities, 20 of them are currently participating in the project (Association of Municipalities, n.d.). During its Peer Review Mission, the OECD was unable to evaluate the progress made in implementing this project.

Like other good practices in other fields of open government, efforts to advance digital government in Costa Rican municipalities are scattered and implemented in isolation. The existence of these two programmes and their lack of co-ordination is testimony to the need for stronger institutional leadership from the central level. Local governments are dependent on private foundations or international organisations to advance their digital government and open government agendas. Many municipalities are making great strides in the right direction but lack the necessary capacity and the support of the central government in terms of capacity-building, funding and guidance. The government could consider using the National Open Government Strategy to provide a whole-of-government digital government vision that provides guidance to the municipalities. The government should also make sure that the responsibility of the agency now in charge of digital government, MICITT, includes overseeing the digitalisation at the local level.

Box 5.5. **Pormibarrio.cr**

"For My Neighborhood" (*Por mi barrio)* is a platform that allows citizens to send reports to the municipality regarding vandalism, malfunctioning services, damages and other common problems of cities from a computer or cell phone. The most reported problems are potholes, fallen trees, lack of lighting in public spaces, broken garbage containers, illegal constructions and businesses, and natural disasters.

Once the problem is located by the citizen he or she enters the website of the platform from a computer or cell phone to report the problem through simple steps. First, citizen will have to select a particular municipality and locate the problem on a map. Citizens can also upload photos and comments. Once the complaint is received the municipality uploads any actions or activities undertaken to solve the problem. The platform allows citizens to view reports or incidents marked on a map and reports that a municipality marked as resolved and those who are still unresolved. In the latter case citizens can continue commenting or uploading photos until the problem is finally solved.

Source: Accesa (n.d.) "Por Mi Barrio Costa Rica", http://accesa.org/portfolio-item/por-mi-barrio-cr/.

Recommendations

In order to strengthen open government at the municipal level, this Review recommends that Costa Rica:

- **Include the subnational level in the National Open Government Policy to establish a common implementation framework**. A more comprehensive open government agenda at the local level would help municipalities both extend and deepen the impact of their initiatives and link them to broader development objectives. Existing good practices are scattered and would benefit from greater direct links with the national open government agenda. In that regard, adopting an access to information law (see Chapter 2) and a national citizen participation framework (see Chapter 4) will provide additional guidance.

- **Facilitate the provision of training opportunities for local authorities in order for municipalities to develop their own local open government policies**, aligned with that of the central government both in terms of methodology and content.

- **Lay the foundation for greater impact of good practices through monitoring and evaluation of the impact of existing initiatives**.

MIDEPLAN could play a key role in promoting a culture of evaluation in the country at all levels of government.

- **Spread existing good practices from certain municipalities** (such as the open data initiative in the Municipality of Palmares) to other areas of the administration and across the country.

- **Create a network of open municipalities dedicated to the spreading of existing good practices.** Costa Rica's most active CSOs should start considering playing a more active role in promoting the principles and practices of open government throughout the country's civil society movements and among its citizens. This would increase the interest of local CSOs in these areas, promote greater civic engagement and boost the number and quality of the social accountability initiatives that are taking place at local level. With the financial support of the central and local government and the donor community, the network could provide awareness raising events and capacity building activities for its members at the subnational level.

- **Use the current multi-level governance arrangements more effectively to promote open government at the local level** and improve the co-ordination both amongst different decentralised institutions and between them and local governments through the Cantonal Councils for Institutional Co-ordination.

- **Consider including more municipalities in the OGP Action Plan cycles** and give municipalities the opportunity to elaborate concrete commitments to promote open local government in Costa Rica's third OGP Action Plan.

- **Consider giving rotating seats on the CNGA and its sub-commissions to municipalities**. The involvement of municipalities in the commission and its sub-commissions could generate concrete value for the private sector and local citizens in terms of transparency, accountability and a better provision of local services.

- **Provide greater Centre-of-Government leadership and more guidance to local governments**. In some cases, like the digital agenda, local governments work with foundations or the private sector to develop their open government practices. Existing initiatives from central government - while having the potential to produce important results – are still insufficient and sometimes risk creating parallel systems that are not integrated with local policy-making, planning and spending priorities.

- **Provide guidance to the local level for municipalities to develop their own local open government policy**, aligned with that of the central government, both in terms of methodology and content.

- **Map actors involved in open government at the local level**. A prerequisite to reforming and increasing effectiveness of public policy is to identify the stakeholders involved in the design and implementation stages.

Notes

1. Administrative resources are mainly used for office space. The project fund is used for the development of the community. Concrete examples include the construction of community centres, bus stops, sidewalks, roads, etc.

2. Trainings and capacity-building session are given in areas such as accounting, legal and administrative aspects, project building, administrative management for indigenous communities, organisation and development as well as in sessions related to alternative dispute resolution, Programa entre Vecinos to strengthen the bonds between the community, childhood and adolescence forums, workshops to involve indigenous youth in development associations and leadership and community participation (www.dinadeco.go.cr/index.php?module=Pagesetter&type=file&func=get&tid=19&fid=doc_digital&pid=25).

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