

Ombudsmen and the Open Government Agenda: Challenges and Opportunities

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ABSTRACT:

Prompted by the recent rise of the “open government” agenda, the anti-corruption landscape in many countries around the world is rapidly changing. A key challenge for ombudsmen-type offices and agencies will be to adapt to these changes in ways that maintain—or, indeed, enhance—their relevance and effectiveness in the global drive toward greater transparency, accountability, and responsiveness of governments everywhere. We think this challenge is also a considerable—and tantalizing—opportunity for ombudsmen to modernize their mandate and mission while simultaneously adding significant value both to the emerging open data movement and to the “traditional” access to information movement. Ombudsmen offices can break the current ‘open government’-‘access to information’ standoff by positioning themselves as uniquely qualified brokers who could orchestrate a unification of these two communities of practice.

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Introduction

Prompted by the recent rise of the “open government” agenda, the anti-corruption landscape in many countries around the world is rapidly changing. A key challenge for ombudsmen-type offices and agencies will be to adapt to these changes in ways that maintain—or, indeed, enhance—their relevance and effectiveness in the global drive toward greater transparency, accountability, and responsiveness of governments everywhere. We think this challenge is also a considerable—and tantalizing—opportunity for ombudsmen to modernize their mandate and mission while simultaneously adding significant value both to the emerging open data movement and to the “traditional” access to information movement.

Both the open data and the access to information movements would be considerably enhanced by working together to leverage each other’s distinctive talents and expertise. Both movements are weaker for their lack of co-operation with each other. We think that ombudsmen offices can break the current ‘open government’-‘access to information’ standoff by positioning themselves as uniquely qualified brokers who could orchestrate a unification of these two communities of practice.

Roadmap

This paper is organized in two parts. We begin by taking stock of the performance of national ombudsmen offices in the past decade. Next, we explain that a key driver

shaping and changing the anti-corruption landscape is the advent of the “open government” movement, and that ombudsmen offices that can position themselves as integral to the “open government” agenda will be best oriented to maximize their effectiveness in the years to come.

In the first part, we use data gathered by Global Integrity during the past decade around the existence and effectiveness of national ombudsmen offices in more than 120 countries to examine how ombudsmen offices rate against other key pillars of anti-corruption and transparency at the national-level in countries. (In general, ombudsmen offices perform relatively well when compared with access to information regimes, parliamentary oversight mechanisms, and centralized anti-corruption commissions or agencies.)

In the second part, we explore the links between the “traditional” access to information movement with the newer “open government” agenda. While not necessarily in tension, the “open government” agenda has skewed (thus far) towards more technical solutions to government accountability and transparency—particularly open data efforts—while largely setting aside the traditional access to information/right to information toolkits. Ombudsmen offices can potentially play a key linking role in bridging that gap, offering government officials, transparency advocates, and the general public with a resource to leverage both cutting-edge technology tools with traditional rights-based approaches to government transparency and accountability.

We conclude by suggesting three opportunities for forward-leaning ombudsman offices around the world to position themselves as uniquely qualified brokers who could orchestrate a unification of these two communities of practice:

(1) Ombudsmen offices have a singular, special insight into the craft of leveraging traditional freedom of information laws to extract key information from the government, hence they can teach the “civic hackers” of the open data movement how to wield these “traditional” tools for liberating government information in order to compel the release of the kinds of key datasets that they have so far struggled to obtain.

(2) With the help of ombudsmen acting as brokers, open data activists could help access to information campaigners find compelling new ways to draw citizens’ attention to the importance of robust freedom of information (FOI) legal frameworks—as a true ‘public good’—by showcasing innovative and influential ways in which important information released under FOI laws are being leveraged by “civic hackers” and other similarly enterprising citizens in developing new ways of holding governments to account.

Finally, we note that *(3) while little work has been done to bridge the human rights community and theory with the open data movement, ombudsman offices could play an extremely valuable role in helping to bridge that gap.*

PART ONE:

The Role of the Ombudsman in a National-level Anti-corruption System

Like any public sector agency or entity, ombudsman offices do not exist in a vacuum. Despite whatever special powers and independence are granted to them through statute or executive fiat, they exist as part of a complicated network of actors designed,

ideally, to promote good governance and effective public sector service delivery.

Ombudsman offices typically sit alongside supreme audit agencies, special judicial tribunals, human rights commissions, special law enforcement bodies, and traditional anti-corruption commissions or agencies in defending the public interest from abuses of power.

As the international anti-corruption and good governance “industry” emerged in the 1990s, a holistic understanding of the ombudsman’s place within this network took hold, particular with the advent of the concept of the National Integrity System pioneered by Transparency International co-founder Jeremy Pope (2000). Pope posited that ombudsman agencies served as one of the core “pillars of integrity” in any National Integrity System, placing such offices and agencies alongside the legislature, the media, and civil society as a crucial independent check on the government.

Transparency International (2011) took the concept a step further through the introduction of National Integrity System studies that qualitatively assessed those pillars through extensive desk research and interviews to explore both the legal anti-corruption framework in a country alongside its actual implementation and enforcement. For the first time, practitioners and government officials alike had information that could both compare ombudsman offices to each other around the world while also exploring the effectiveness, or lack thereof, of ombudsman offices to other pillars of integrity within a government.

Beginning in 2005, Global Integrity (another international non-governmental organization focused on integrity and anti-corruption issues) took the methodology a step further by assigning quantitative rankings and scores to Pope’s NIS concepts through in-

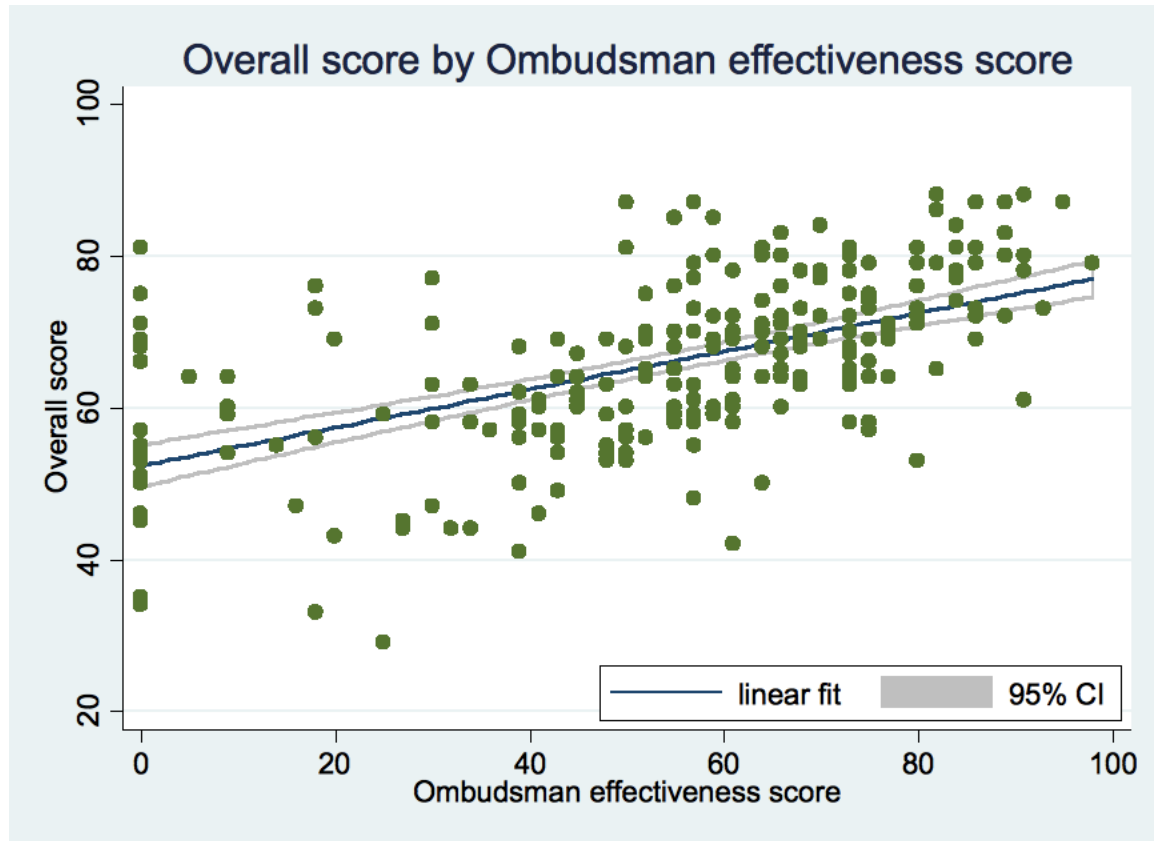
depth fieldwork in countries, working with teams of local researchers, academics, and journalists. The results finally provided a way for observers to quickly assess the relative strengths and weaknesses of ombudsman offices, again both (a) relative to each other, and (b) relative to other pillars of integrity within the public sector.

The results of this extensive research across both Transparency International and Global Integrity—totaling tens of millions of words of qualitative analysis with tens of thousands of data points—helps to shed some light on a basic question: do ombudsman offices contribute to effective national-level anti-corruption performance?

A simple visualization of that data suggests that, in general, effective ombudsman offices are correlated with effective national integrity systems. (See figure 1.) While there are important exceptions—India does relatively well without a formal ombudsman-type office while Qatar struggles despite a fairly robust ombudsman-type institutional framework—these data do suggest that while the existence and effectiveness of an ombudsman office may not by itself *cause* good governance or effective anti-corruption, it seems to be associated with the positive outcomes. Put simply, we can posit that investment in an ombudsman office is indeed likely to be a vital component of an overall effective anti-corruption framework.

Data and experience supporting the notion that ombudsman offices are useful components of an effective national-level anti-corruption regime have not, however, prevented the dialogue from shifting under the feet of ombudsmen away from “anti-corruption” and even “government transparency” and towards something arguably even more ambitious but less specific: “open government.”

Figure 1: Relationship between the existence and effectiveness of ombudsman-type agencies and overall national anti-corruption scores on the Global Integrity Report, 2006–2011.



(N=242; $p < .001$; R-squared=0.3246; prediction equation: $\hat{y} = .2514022x + 52.30527$; 95% confidence interval: .2052955 to .297509)

PART TWO:

The Advent of the Open Government Agenda

On 20th September 2011, on the margins of the UN General Assembly meetings in New York City, more than 40 governments gathered in a grandiose ballroom in the famed Waldorf Astoria hotel in New York City to launch the Open Government Partnership (OGP) (Rubinfeld 2011). US President Barack Obama chaired the meeting and introduced an inspiring video describing various “open government” interventions, which played to heads of state and government on two massive screens hanging above.

Dozens of media crews stared onlookers in the face from a bank of risers opposite the world's leaders, eight of whom—the founding OGP governments—then proceeded to announce the commitments their countries were taking towards embracing open, transparent, and accountable government through their OGP National Action Plans.

For many from civil society in attendance, it seemed a potential watershed moment. After decades of pushing for better access to government information, anti-corruption reforms, and the good governance agenda, had anti-corruption and transparency reformers finally arrived at some sort of finish line? Was “open government” the answer they had been seeking for so long without even knowing its name?

It's undeniable that the “open government” agenda is on the move internationally, and not just because of OGP. “Open” is the new black, the new hipster term of art used and abused by technocrats both within and outside of government to describe an aspirational goal of transforming government into something more flexible, responsive, participatory, value-added, and transparent.

We now have a flourishing open data movement around the world working hard to liberate vast amounts of government information in machine readable, digital formats (see, *e.g.*, Berners-Lee 2010; Davis 2010; Fung and Weil 2010; Lathrop and Ruma 2010; HM Government 2012) . In low-income contexts, these open data efforts are quickly morphing into an ambiguous development agenda that seeks to leverage “open”—however defined—towards more responsive and impactful development assistance. The open source software (Deek and McHugh 2007; Lerner and Schankerman 2010) community provides amazingly powerful software programs to the world at no cost.

Open311 (<http://open311.org/>) efforts in cities around the world are helping to reshape how local officials provide information to their citizenry, while open science (Allen 2011; Monbiot 2011; Nielsen 2011; Eisen 2012) and open education (see *e.g.*, www.coursera.org; www.khanacademy.org) initiatives seek to disrupt the academic world by democratizing the learning and research agendas. Open, it seems, is everywhere.

The “power of open,” a slogan adopted early on by OGP, remains less proven, however. The enunciated theory of change is clear—opening up government leads to improved service delivery through greater transparency, accountability, and participation—but the evidence to substantiate that theory of change is anecdotal and story-based rather than systematic. It’s frankly too early to know how far “open” can really take government, even though many are working hard to push the agenda to its limits.

As “open government” has quickly overtaken “anti-corruption,” “transparency,” and even “human rights” as the buzzword *de jure*, it’s worth reflecting on both the promise and peril of the open government construct, particularly in the context of ombudsman offices around the world.

First, the label of “open” is a double-edged sword. In the early days of trying to conceive of what was eventually to become OGP, there was a conscious effort to avoid defining “open government” too narrowly. This was a deliberate approach in that it allowed for a “race to the top” approach within OGP (and the broader open government community of practice) by not arbitrarily boxing governments and communities into random checklists of international best practices. What might be most important for open

government in the United States—perhaps open data efforts, or greater transparency around political financing and lobbying activities—are almost certainly not the most important open government priorities for, say, the Solomon Islands.

This “let a thousand flowers bloom” approach has many advantages, but it also comes with a cost. Absent any agreed definition of “open government,” governments and civil society alike are wont to shovel any and every public sector reform into the basket of open government. In the OGP context, one can find national action plans that contain many strong and appropriate open government commitments alongside others that focus on drug eradication efforts, clean beaches, and other reforms that strain the definition of open government (Bahl 2012). The risk is that “open government” eventually becomes watered down into a hollow, rhetorical nothingness. Some in civil society are launching an effort (www.opengovstandards.org) to define open government norms—at least from the non-governmental perspective—which is a welcomed next step.

Second, the fad around “open” may be having some unexpected positive impact in that it is helping to push long-standing reform plans over the finish line. Rather than being immediately transformative, it’s arguable that open government’s first-order impact in many countries may be to provide impetus and traction to public sector reform efforts that have become stuck in the mud. In several recent cases, long-standing contentious legislative and institutional reform battles were finally resolved because they were ultimately packaged as “open government reforms.”

Two examples bear mentioning. First, as part of its initial OGP Action Plan, the United States government finally signed up to two important international transparency initiatives—the International Aid Transparency Initiative, and the Extractives Industries

Transparency Initiative—not because the US government hadn’t been pushed for years by civil society on both fronts, but because its leadership position within OGP became politically untenable absent an embrace of those two key international efforts. Similarly, there is anecdotal evidence (freedominfo.org 2012) that Brazil’s passage of a long-fought for freedom of information law last year was attributable to its co-chairmanship of OGP, another case where it became difficult for the country to invest in open government efforts internationally without putting its own house in order. The lesson in both the US and Brazilian cases is that we shouldn’t dismiss the PR effect of open government—while it might be a fad, it’s having some concrete and positive impact in the short-term.

Third, it’s increasingly difficult to be half-pregnant when it comes to open government. Governments that on the one hand embrace open data efforts while on the other hand roll back civil liberties or access to information laws undermine the open government movement by exposing it to charges of selective reform and hypocrisy. In the United Kingdom, for example, dozens of civil society organizations have publicly expressed their reservations over the current government’s fetishizing of open data efforts while simultaneously seeking to water down—critics charge—Britain’s freedom of information regime (Callamard et al. 2012). The United States helped to launch OGP, and the Obama administration arguably crystallized the term “open government” through its pioneering Open Government Directive and ethics reforms during its first months in office in 2009. But critics have cried foul over the administration’s overzealous pursuit of government whistleblowers (see, *e.g.*, Greenwald 2010) and continued investment in counter terrorism programs that skeptics allege violate civil liberties and international law (see, *e.g.*, Posner 2012). South Africa, a founding OGP government, came under criticism

last year for proposing a new secrecy law that would have rolled back access to government information (Human Rights Watch 2011), while Russia has recently signaled its intent to join OGP (see <http://www.opengovpartnership.org/countries/russia>), a move that will certainly invite a healthy dose of skepticism from many quarters.

None of these countries make the case against open government, of course, but their struggles to embrace open government at a holistic level highlights a challenge: how to allow for nationally- and locally-specific open government reforms to take root at an organic pace while simultaneously demonstrating to the public that “open” really means something beyond a bumper sticker and a slogan. There are no simple solutions to that. At best, open government champions both in and outside of government will have to publicly acknowledge the incomplete experiment that is the open agenda while at the same time investing in short-term reforms that demonstrate real-life impact.

Fourth, and finally, open government is not free. It requires a real investment of time, energy, creativity, and staffing to make it happen. Despite the fad around crowdsourcing and “kick starting,” open government won’t work on the cheap. Internal champions within government need budget, staffing, and political space to work their magic; civil society experts need funding to keep the lights on; and technology tools don’t often build themselves for free despite the best efforts of the open source software community. The label “open government” might suggest an era of easy, laid back government where the costs of turning the Titanic of the public sector melt away, but the reality is that open government requires a non-trivial investment of resources to work. Failing to adequately fund or staff open government initiatives, or to falsely assume that

“the public” will crowd source everything for us for free, is the surest way to undermine their success.

Open government is here to stay. What comes next is the more difficult but arguably more exciting part—putting the theory into practice, getting the hard bits right, and demonstrating the return on investment from open.

So where does the ombudsman office fit into all of this energy around “open government?” Thus far, ombudsman agencies have played little to no role in most countries in the explosion of open government initiatives; in fact, they have generally been absent from the dialogue. Should this be cause for concern, or not?

In the short term, yes. For better or for worse, “open government” will likely dominate the discourse, the funding priorities, and the political capital invested into public sector reform in the coming years in many countries. Whether good or ill, agencies and public sector bodies wanting to remain visible to both the public and political leaders will be forced to embrace “open” as their mantra of choice. The real choice will be between a glossed-over embrace of the term or a full-on theological conversion, but in either case a single-minded focus on “speaking truth to power” will be insufficient to capture the public imagination in the years to come. Open government efforts, on the other hand, will.

Despite those challenges, ombudsman offices have a unique opportunity to insert themselves productively into the open government dialogue by, somewhat surprisingly, embracing the role of a broker between two disparate communities of practice: the “traditional” freedom of information activists and lawyers and the “civic hacker” community of open data evangelists and computer programmers.

Ombudsmen as Open Government Brokers

An emerging concern in the open government community is the emphasis on “open data” initiatives at the expense of other non-technology focused reforms, especially the traditional freedom of information agenda (McIntosh 2012). While more than 90 countries around the world now have freedom of information laws in place, some observers worry that the advent of the open data movement will distract attention from the push to encourage countries to embrace information transparency through FOI laws (Ibid). Open data activists and “civic hackers,” on the other hand, often view FOI as an anachronistic approach to liberating government information, preferring instead to push governments to digitize and make machine-readable vast data sets that analysts can then pore over to extract valuable information, rendering the need for a traditional information request obsolete (Ibid).

While there are emerging signs of convergence between the two communities (Ibid), a significant gap remains. Both the open data and the access to information movements would be considerably enhanced by working together to leverage each other’s distinctive talents and expertise. Both movements are weaker for their lack of co-operation with each other. This is where ombudsman offices can modernize their mandate and mission while simultaneously adding significant value to the emerging open government agenda. We think that ombudsmen offices can break the current ‘open government’- ‘access to information’ standoff by positioning themselves as uniquely qualified brokers who could orchestrate a unification of these two communities of

practice. Below, we suggest three opportunities for forward-leaning ombudsman offices around the world to do just that.

(1) Ombudsmen offices have a singular, special insight into the craft of leveraging traditional freedom of information laws to extract key information from the government, hence they can teach the “civic hackers” of the open data movement how to wield these “traditional” tools for liberating government information in order to compel the release of the kinds of key datasets that they have so far struggled to obtain.

Too much has been made of the alleged difference between “data” and information. Computer data is simply another form of (government) information that just happens to be stored in ones and zeros as opposed to handwritten memos crafted by officials. As open data activists and hackers struggle to demand the release of truly key data sets from governments (for example, itemized public funding of political parties as opposed to more mundane data sets around public transport schedules) ombudsman offices can play a key supporting role by teaching civic hackers how to wield the “traditional” tools for liberating government information—notably, FOI laws—in order to compel the release of key data sets. And helping to shape the discourse in a way that moves the two communities beyond the false distinction of “data versus information” could position ombudsman offices squarely at the center of the contemporary open government agenda.

(2) With the help of ombudsmen acting as brokers, open data activists could help access to information campaigners find compelling new ways to draw citizens’ attention to the

importance of robust freedom of information (FOI) legal frameworks—as a true ‘public good’—by showcasing innovative and influential ways in which important information released under FOI laws are being leveraged by “civic hackers” and other similarly enterprising citizens in developing new ways of holding governments to account.

By testing such new accountability mechanisms on truly key datasets (such as itemized public funding of political parties) released under FOI laws, rather than the more mundane datasets (such as public transport schedules) typically released by governments in response to open data activism, the genuine benefits to the public of “civic hacking” efforts would be far more clearly and forcefully demonstrated.

Finally, we note that (3) *while little work has been done to bridge the human rights community and theory with the open data movement, ombudsman offices could play an extremely valuable role in helping to bridge that gap.*

Advocating that open data is indeed as fundamental a right as freedom of expression and freedom of information could similarly position ombudsman offices at the center of the discussion. Open data activists, and the broader open government community, typically have far less appreciation for the human rights “toolkit” of legal precedent and international statutes that could potentially be leveraged in their favor. Ombudsman offices could play a natural role, given their historic focus on protecting human rights, in facilitating knowledge exchanges aimed at identifying which area of human rights law, both international and domestic could best be tapped to support and strengthen the open data and broader open government movement.

CONCLUSION:

Whither the Ombudsman?

Ombudsman offices need not pivot their missions entirely to focus solely on the open government movement. But it is becoming increasingly clear that ombudsmen that are able to contribute valuably to the open government debate and dialogue will be the ombudsmen best positioned in the early decades of the 21st century. The rise of the open government agenda is not a threat to ombudsmen. Rather, it is a tantalizing opportunity to fuse disparate communities of practice with one another in a way that contributes powerfully to the goal of transparent, accountable, and responsive government.

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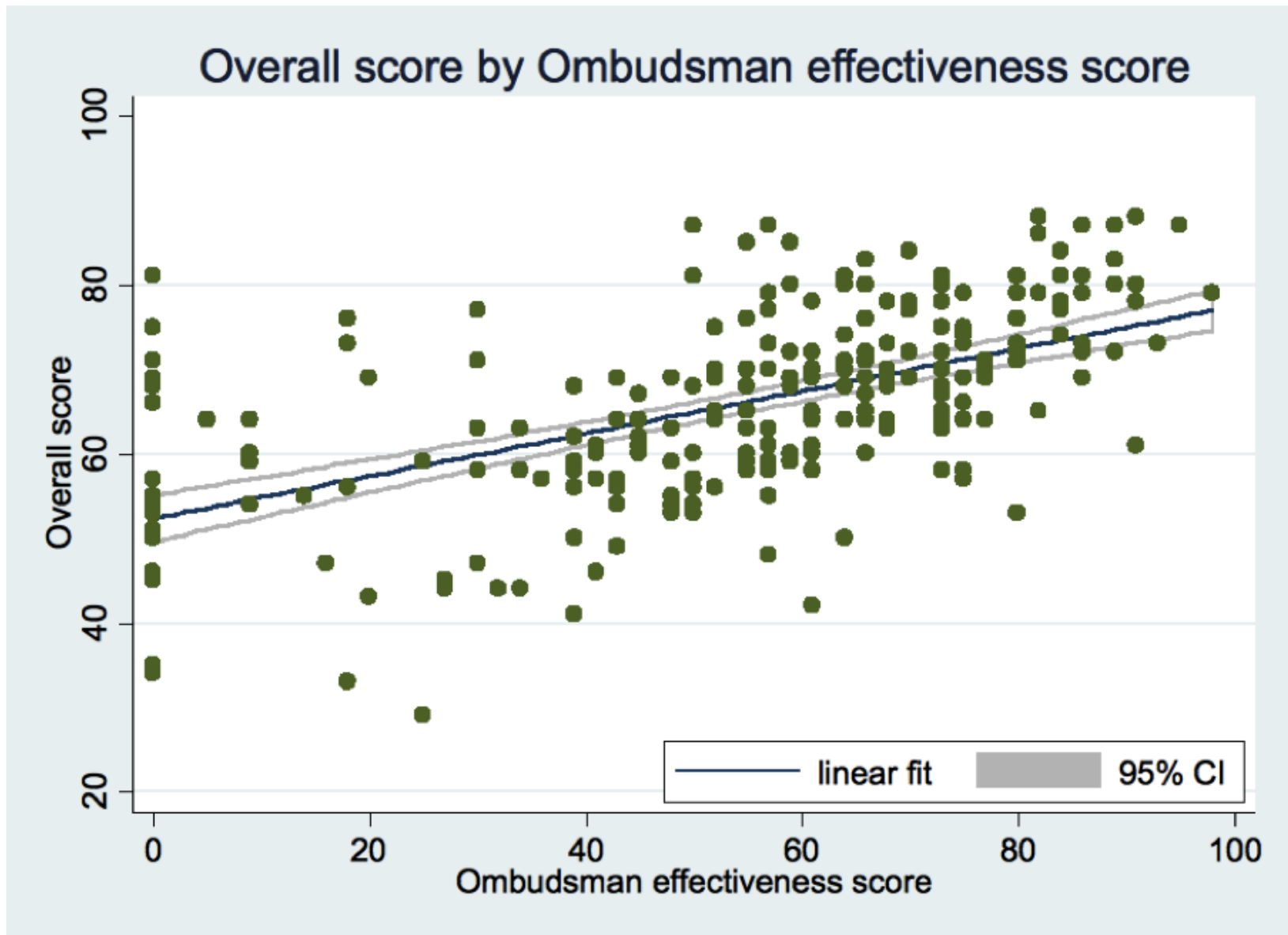
GLOBAL INTEGRITY
Innovations for Transparency & Accountability

The Ombudsman as Broker

Bridging the open data and right to
information communities

Nathaniel Heller, Global Integrity

Ombudsmen: Helpful for Anti-Corruption



The New Trend: Open Government



Open Government = Accountability?



A word cloud of terms related to open government and accountability. The most prominent words are 'open data' and 'e-government'. Other visible terms include 'access to information/freedom of information', 'citizen engagement', 'public servants/civil service', 'sub-national governance', 'procurement anti-corruption', 'budgets & financial planning', and 'capacity building/training'. The words are arranged in a non-linear fashion, with some overlapping.

open data

sub-national governance

procurement anti-corruption

access to information/freedom of information

public servants/civil service

e-government

capacity building/training

citizen engagement

budgets & financial planning

Bridging the Gap

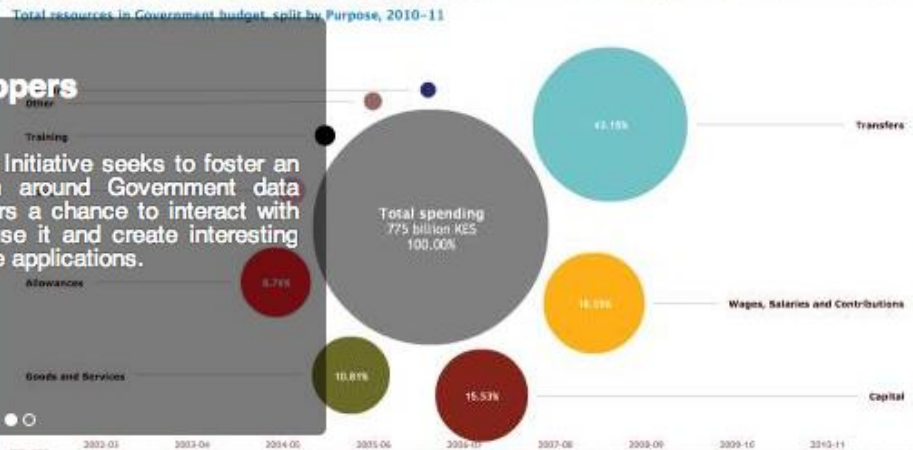


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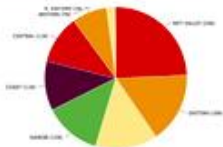
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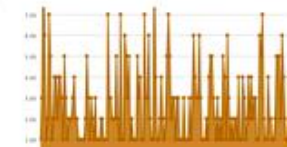


[Health Facilities](#)



Health Facility Chart

This chart shows the Health Facilities distribution across the Country.



KCPE Exam Scores

From the Kenya National Examinations Council, this data shows School KCPE exam results in 2006-2010.



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Cuajimalpa 8	Benito Juárez 19 <u>(1 pública)</u>	Cuauhtémoc 7 <u>(1 pública)</u>	Iztacalco 2
M. Contreras 5	Álvaro Obregón 24	Coyoacán 19	Iztapalapa 18
Tlalpan 19	Xochimilco 6	Milpa Alta 0	Tláhuac 2



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