

# Open Government in France : an Empty Promise ?

As France is about to host the Open Government Partnership Global Summit, a number of Civil Society Organizations point out the inconsistencies of the French government. Some have decided not to attend.

The report on "open government" in France is co-signed by the following Civil Society Organizations (CSO): ANTICOR, April, BLOOM, DemocracyOS France, Fais ta loi, Framasoft, La Quadrature du Net, Ligue des Droits de l'Homme, Regards Citoyens, République citoyenne, SavoirsCom1.

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## **While showcasing a "dialogue with civil society", France is far from being an exemplary democracy**

Open government is a new way to collaborate between public actors and civil society, to find mutual answers to the important challenges democracies are facing: human rights, preservation of the environment, fighting corruption, universal access to knowledge, etc.

To this end, seventy countries joined the Open Government Partnership (OGP). Each state is required to co-create and implement a "National Action Plan" together with civil society.

France joined the Open Government Partnership in April 2014, and published its first National Action Plan in July 2015. Since October 2016 the French government co-chairs the OGP with WRI (World Resource Institute), a US-based civil society organization. As such, France will host the OGP Global Summit, in Paris, from December 7th to December 9th, 2016, announced as the "COP 21 for democracy".

As the "Country of Human Rights", co-chair and host of the OGP Global Summit, France should be exemplary regarding open government.

Unfortunately, actions do not match the promises, including in the three areas identified as "core priorities" by the French government itself (1. climate change and sustainable development ; 2. transparency, integrity and anti-corruption ; 3. building digital commons), despite the Government's self-satisfaction. Worse, some decisions, incompatible with democratic progress as promoted by the Open Government Partnership, are leading France on a dangerous path.

The Civil Society Organizations who co-sign this statement, publish their critical analysis of Open Government in France and ask the French Government and Representatives to reevaluate some choices that are widely inconsistent with general interest and OGP's principles, and to finally bring coherence between speeches and actions.

## **Steep setbacks on human rights and fundamental liberties**

*Initiating generalized surveillance and a registry of french citizens is a threat to privacy, and prove counterproductive in terms of public safety.*

In July 2015, as France was celebrating its first *Plan d'action national*, « designed in association with representatives of the civil society », a bill on Intelligence was enacted, in which some provisions, nationally and internationally considered as oppressive and antidemocratic, have specifically been the target of a considerable uprising from the civil society and, since then, of two partial censures by french highest judicial court, the French Constitutional Council.

In November 2016, the government also published on the sly, during the Halloween weekend, a controversial decree aiming to create a database of the entire French population. This database, known as TES (« Titres Électroniques Sécurisés », secure electronic documents), holds identity, ancestry, biometric data, and has the CNIL (Commission nationale « Informatique et Libertés »), the Conseil National du Numérique, and again the civil society, concerned.

The very existence of this centralised database, that could potentially be hacked (as were the database of the Police itself, or those of millions of public servants in the United States, for instance), along with the proposed weakening of cryptography, which today protect digital communications, despite alerts by civil society and the ANSSI (Agence nationale de la sécurité des systèmes d'information), threatens the safety of citizens and companies alike.

*An endless state of emergency, the State convicted for discriminatory and abusive controls*

While the enactment of the emergency state, after the terrorist attacks of 13 November 2015, seemed lawful, it's incomprehensible that it had been renewed so many times for more than one year, and that it will probably stay active until May 2017 (French general and presidential elections), or worse, for many other years.

It forms an exceptional measure in the usual democratic framework that allows the Interior Minister and prefects (as opposed to an independant judiciary authority) to decide of house searches, house arrests, blocking of websites, prohibition of demonstrations... with the risk of abuse like those already seen against actors of the social movement during the COP21 or in Spring 2016, and of arbitrary decisions denounced by the civil society.

We also would like to show off that the ruling of the Cour de cassation (french Supreme court) dated 9 November 2016, convicted the State for discrimination in a litigation about identity check.

*Freedom of speech and press under attack*

At the same time, the "Equality and citizenship" bill, which shakes the fondation of 29 July 1881 law on rights of the Press, is considered as dangerous and denounced in a collective text by journalists and numerous medias rallied on a "bill profoundly hostile to liberties that endangers one of the pillars of democracy".

## **A hollow citizen participation system biased by conflicts of interest**

*Much communication to flatter citizens and manipulated consultations that hide forced adoptions as well as the action of lobbies*

The government and the administrations increased the number of consultations: on the *République numérique (Digital Republic)* bill, on startups in Europe, on the *Egalité et Citoyenneté (Equality and Citizenship)* bill, on the *Egalité réelle outre-mer (Real Equality Overseas)* bill, on the development of the charter of public involvement in environmental dialogue, on development of an international digital strategy, on the development of the digital strategy of French Development Agency...

The public relations operations set up during these consultations suggest that the opinion of each citizen would play a decisive role ("Let's write the digital law together" one could read on the [consultation on the Digital Republic bill](#))

As it turns out, that didn't happen and some organisations denounced it: "Increasing the number of consultations and embryos of participatory process will not change the course, as long as the old-world political logics keep prevailing. Over the past two years, civil society has never been more widely consulted and so poorly understood [...]. The participatory logic has been constantly exploited to hide the persistence of a stronghold of the administration and lobbies." [La Quadrature du Net](#) wrote in May 2016, concluding with a "[catastrophic assessment](#)".

In addition, while communicating on its ability to listen to citizens, the government did not hesitate to command its decision by short-circuiting the usual parliamentary mechanisms (6 uses of the 49-3 article of the Constitution during the "Macron" and "El Khomri" bills, three laws of extension of the state of emergency tabled, discussed and then promulgated in less than 72h) and by ignoring the historical mobilization of civil society giving birth to movement "[Nuit Debout](#)".

Even the French Council of State has [publicly deplored](#) "a lack of governmental work". Indeed, the government have waited too much to seize the Economic, Social and Environmental Council (an institutional representation of the civil society) and other organisations for their opinions to "take the smallest profit to improve, even change [the] bill", leading to "a real denaturation of these consultative procedures made compulsory by the Constitution or by law".

**The findings are irrevocable: the government increases consultations to give the impression to civil society that they "co-construct" policies of the country, but they stay deaf to calls of citizens and to those of their representatives, as soon as the subject raised or the tone do not please them.**

*A problematic partnership between a private company and the government through an organisation channeling conflicts of interests*

All or most of government consultations have been carried by one and single company: [Cap Collectif](#), which founders also created the [Parliament & Citizens platform](#) and the [Open Democracy](#) organisation.

There is a strong confusion since the creation of those organisations, both through ambiguous communication between those three brands and on their governance. Indeed, on the board of Open Democracy, we find two associates and one employee of Cap Collectif, as a project manager to the office of the State Secretariat to Digital and Innovation, VP of the association and, a short time ago, in charge to promote Parliament & Citizens to French MPs.

The convergence of interest is clear: on the one side, the government is giving itself a good image through the organisation of citizen consultations which it considers only when convenient, with the help of a less scrupulous provider, while this one benefits both from a privileged access to the public offer and from a support to "structure" civil society and democratic innovation while being funded. All of this to the detriment of democratic innovators who would not let themselves be "structured"... and of course, of citizens.

The height of irony, the Cap Collectif software, which is today used for the "open government" in France, is a opaque software which source code is closed and was never revealed despite the pledges of its directors and, in contradiction with Article 19 of the "[Charter of Open Democracy](#)" which foresees that: "Members of the Open Democracy collective deliver commons. They commit to document projects that are made within the collective and make them public in open and reusable standards with no legal restriction: free software (GPL-like), information in open licence (Creative Commons) and open data (open licence or ODbL)". It is also the case for other organisations that are members of Open Democracy such as the [make.org](#) company, founded by the former president of Publicis France (a PR and advertisement firm).

This situation has two conflicts of interest. First, when the consultation for the Digital Republic bill was set up, the Cap Collectif company had interest for free software not being put forward in the public contract. Second, when they set up the consultation on the organic [law on generalisation of consultations](#), Cap Collectif had interest in those consultations being generalised considering its dominant position on the market.

Finally, is the fact that French people are invited to collect all of their political opinions in one and unique opaque and centralised system a reason to worry ? When in its [Article 8](#), the Informatics and Liberties law includes the precaution to forbid, unless in a peculiar case, the collect and the processing of "personal data showing directly or indirectly [...] political opinions [...]"?

**This monopole and those conflicts of interest are unacceptable and undermine democracy. They create a risk on a bias on the output of those consultations, exceedingly when the system's source code is not public. The opacity of this centralised apparatus on collection and processing of personal and sensitive data is a problem.**

**If the will of the government were to encourage civil consultations and their appropriation by citizens, they should have given the means to offer all a free and open platform that answers all those needs and that is usable by all. On the contrary, encouraging a closed-source solution maintained by one entity is the best way to limit development of those practices.**

## **Technological choices contradicting with advocated transparency principles**

[Free Software](#) is the *sine qua non* of any true democracy in the digital age, building up fundamental rights and protecting users. Source code (that show, step by step, the inner workings of software), are in open acces: everyone can freely use, study, copy, share, modify or even upgrade those.

As highlighted by Paul Maassen, director of the civil society team support for the Open Government Partnership (OGP), "the [open source model](#) and open gouvernement almost work with the same principles" i.g. transparency, collaboration and sense of responsibility towards the community.

While France is committed in an open governance process, some administrations and ministries still chose the exact opposite.

In 2013, French journalist, Jean-Marc Manach, released details of an agreement already condemned in 2008 by NextINpact, concluded without a call for tenders, between the French ministry of Defense and a Microsoft branch that only pays taxes in Ireland. A committee of 15 military experts concluded that the solution chosen was the one with the "most prohibitive risks": risks of "losing national sovereignty", economic risks, risks of "dependency" or even "addiction" to the brand's products... Following a [Cash Investigation](#) story on 18 October 2016, April demanded a parliamentary investigation on relations between Microsoft and the state.

In November 2015, just a few days after the civil consultation on the Digital Republic bill, in which citizen contributions pushed towards using free software in administration, the ministry for Education entered an agreement with Microsoft to equip public schools with closed computer tools, thereby addicting administrations and users - both teachers and pupils - to Microsoft products, with the prospect of having those become customers in the future.

The civil consultation was seen as "libre"-washing, as Microsoft's lobbying operations were ongoing, depicted by the newspaper, "Le Canard Enchaîné", and pushed Framasoft to stop direct collaboration with the ministry.

When analysing the results of the civil consultation for the Digital Republic bill, what is striking is that the term free software doesn't even appear in the original draft, even so while numerous debates on the subject had taken place during the consultation. In the final version, article 16 mentions that administrations "[encourage using free software and open formats](#)", a legally worthless and politically bland proposal, without any progress since the 2012 ministerial note on "the good use of free software in administrations".

The government claims an alleged incompatibility between giving priority to free software on the one hand, and public procurments law on the other hand, but they refused to hand over the arguments coming from the ministry of Finances when asked for them.

**Thus, in France, despite clear expectations expressed by citizens, the State will still prefer risky opaque software, including in terms of dependency, rather than free, transparent software, even when child education, national security and democratic processes themselves are at stake. Meanwhile, somewhere else in the world, some countries with strong digital incline now [enforce](#) free software quotas in administrations.**

## Hard to believe promises about "commons"

The French president, in [his speech at the United Nations](#), mentioned "digital commons" among the three priorities of France, co-president of the OGP until the end of the year 2017.

However, when building the Digital Republic bill, the government ruled out the will of civil society, that was backed up by consultative instances such as the Conseil National du Numérique, to include "knowledge commons" in the law, therefore granting the demands of right holders and copyright collective lobbies.

Moreover, in spite of several representatives trying to restore the article in the bill during national Assembly debates, the government refused its enactment while Axelle Lemaire, state secretary for

digital technologies and innovation, committed before representatives to setting up a dedicated State Council mission. This promise was never fulfilled.

Furthermore, the official article on French vision on open government states that "digital commons" includes "resources such as data and source code in an open format". As stated before, the current government policy towards free software is far from this ambition.

**Can we trust the executive power on those matters, given what we were able to witness for the last months? What concrete proposals are made by the government?**

## **Transparency and anti-corruption measures far behind expectations, especially in the environment and sustainable development fields**

*"Sapin 2" Bill : a shallow bill on transparency and corruption*

Online consultations, set up without any safeguards and with the conflict of interest stated above, can allow powerful lobbies to have the last word even more easily

Even though transparency, integrity and countering corruption are priorities for the French presidency of OGP, the BLOOM organisation regrets that the recent "Sapin 2" Bill, that was supposed to improve the situation and regulate how lobbies can influence political decisions, ended up being a hollow shell without any effective proposal (in particular, the bill creates confusion by putting on the same levels organisations for protection of nature, for Human Rights, and industrial lobbies, while not considering the MEDEF - the main French employer union - as a lobby).

As it was voted, the "Sapin 2" Bill will prevent citizen to know "who intervened, at which level, before public decision-makers, to enhance, fix, update a reform, and which arguments were used" as François Hollande promised in January 2015.

*A discretionary provision for public open data*

Even when opening public data is one of the corner stones of building the Open Government Partnership, the government published just before the summit two decrees that define the price for selling State-produced data.

Those two decrees ratify the ability for administrations to sell data they produce during their public service missions. The Regards Citoyens organisation started a dispute procedure against those decrees before the French State Council and the Constitutional Council.

Hence, just days before the OGP summit opens, France decides to revert promises it made during the G8. In June 2013, France committed to make available for free, as Open Data, all geospatial, topographical data, those from national and local maps and weather data.

The publication of decrees ratifying fees for those data confirms it: France may sign any charters or take part in storming declarations about Open Data or open government, we will not forget that it is unable to respect its own promises.

*A serious reluctance to public open data: an example with fishing funding data*

While some administrations show good will for openness as far as public access to their data is concern, others clearly do obstruction. Those acts may have dire consequences, for example towards environmental issues, as shown by what the BLOOM organisation experiences.

To decrease the concerning overexploitation of fish, degradation of marine environment and fishing job cuts, analyzing data about fundings granted to the fishing sector is needed, so that those considered bad for sustainable development can be stopped, as proposed by Sustainable Development Objective #14 in the United Nations programme.

Since June 2015, BLOOM has not stopped inquiries to the French administration for marine fishing and aquaculture (DPMA) that holds most of this data, in particular those about who benefits from european fundings.

Unfortunately, the administration systematically refused those demands without any possible dialogue. BLOOM seized the French committee for access to administrative documents (CADA) and after ten months, finally had access to an obsolete dataset. Other requests for public data were faced with grotesque procedure where the administration would send a printed download link by mail at the wrong address (so that the download link was expired when the mail was finally received). In the end, published data were either of very poor quality, or didn't match what was originally requested.

State Secretary to Transports, Alain Vidalies was even shocked that people would request publication of fishing funding grants as it would have created, as he put it, "unacceptable suspicion". Isn't it surprising, in these times of open government, for a Minister to consider that accessing public data would only be suspicion...

## **A disgusted civil society**

The discourse of public authorities on the importance of public society participation, when confronted to their actions, leads to the dellusion and disgust of both citizens and NGOs.

Just regarding the flagship draft of the Digital Republic bill, l'Observatoire des Libertés et du Numérique (Digital and Liberties Observatory) expressed disappointment about "the way in which the very conduct of the bill drafting was led. It is deeply discouraging for all citizens and organisation, that took it to their hearts without it being truly taken into account, except through auto-congratulous comments from the government".

La Quadrature du Net stated that it would "refuse to lose any more time upon trying to influence in a rational way those who don't want to listen, and choose to change the focus of its actions".

La Coordination nationale Pas Sans Nous (Not without Us National Coordination) is afflicted by a political PR approach, that does not care about citizens, including those from working-class and low-income neighbourhoods, and refused to take part of what it denounce as a masquerade.

The Framasoft NGO chose to stop any direct work with the Education ministry.

The Savoir Com1 association anounced, for its part, that it would boycott the global OGP summit.

Dellusion is also strongly present among population which, confronted with unkept promises, is tempted by more and more extreme political choices, in France as well as in other countries.

## **Open government: enough pretending!**

The record we put up is unfortunately extremely negative. It underlines the tremendous gap between the story telling of the government and its PR, and the real actions took by the State regarding open government.

As it is, we do notice progress being accomplished in France on the subject. Such is the birth of Etalab, a good-willing administration that monitors and increases the public data opening, the Free Software use, and works on the National Action Plan. However, this agency -due to its underbudgetting- is currently undersized and powerless in the fights against political forces and economical lobbies.

We maintain hope that this public stance will be the occasion, for the government, to change its ways of doing things and to put its actions were its mouth is.

Among signatories of this statement, certain non-for-profit organisations, such as BLOOM, DemocracyOS, Regards Citoyens, République citoyenne, will relay this message into the Summit to hundreds of French and international participating organizations while some others, such as Framasoft ou SavoirsCom1, will not take part in the event, although first considering it.

### **The signatories**

ANTICOR is a non-profit organisation founded in 2002 by Eric Halpen and Severine Tessier to fight corruption and bring ethics back into politics.

April is the main French advocacy association devoted to promoting and protecting Free/Libre Software. The involvement of its volunteers and staff enables it to carry out many and diverse actions to promote digital freedoms.

BLOOM is a non-profit organization founded in 2005 by Claire Nouvian that works to preserve the marine environment and species from unnecessary destruction and to increase social benefits in the fishing sector.

DemocracyOS France is a non-profit organization promoting the use of an open source web platform that allows transparent and collective decision making.

Fais Ta Loi is a collective that aims at helping people furthest from the democratic debate to make their voice heard in Parliament.

Framasoft is a network dedicated to the promotion of free culture, in general, and free software in particular.

Ligue des Droits de l'Homme : acts for the defense of the rights and liberties of all. It is in interested in social citizenship and proposes measures for a strong and vibrant democracy, in France and in Europe.

La Quadrature du Net is a non-profit association that defends the rights and freedoms of citizens on the Internet.

Regards Citoyens is a French organization of citizens volunteering from all regions to work together on providing a better understanding of the French democratic institutions by leveraging public information in new and creative ways. Regards Citoyens has advocated for public Open Data in France since 2009. Our most prominent initiatives are parliamentary monitoring websites including notably: [NosDeputes.fr](http://NosDeputes.fr); [NosSenateurs.fr](http://NosSenateurs.fr) and [LaFabriqueDeLaLoi.fr](http://LaFabriqueDeLaLoi.fr).

République citoyenne is a French CSO, created in 2013, that aims at stimulating citizens' critical thinking on democratic issues and on open government, in particular.

SavoirsCom1 is a collective dedicated to promote Knowledge Commons in public policies.