

Independent Reporting Mechanism

South Africa
Co-Creation Brief 2022

Open
Government
Partnership



Independent
Reporting
Mechanism

Introduction

This brief from the OGP’s Independent Reporting Mechanism (IRM) serves to support the co-creation process and design of South Africa’s fifth action plan and to strengthen the quality, ambition, and feasibility of commitments. It provides an overview of the opportunities and challenges for open government in South Africa and presents recommendations. This brief does not constitute an evaluation of a particular action plan and its purpose is to inform the planning process for co-creation based on collective and country-specific IRM findings.

The Co-Creation Brief draws on the results of the research in the prior [South Africa IRM reports](#). The Brief also draws on other sources such as the [OGP National Handbook](#), [OGP Participation and Co-creation Standards](#), IRM guidance on [online OGP repositories](#) and the [minimum threshold for “involve”](#), to ensure that recommendations provided are up-to-date, and to enrich the recommendations by drawing on comparative international experience in the design and implementation of OGP action plan commitments, and other context-relevant practice in the field of open government. The Co-Creation Brief has been reviewed by IRM senior staff for consistency, accuracy, and with a view to maximizing the context-relevance and actionability of the recommendations. Where appropriate, the briefs are reviewed by external reviewers or members of the IRM International Experts Panel (IEP).

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Section I: Action Plan Co-Creation Process

Snapshot of previous co-creation processes in South Africa

Iterative dialogue between civil society and government	Grey			
Government provides reasoned response	Grey			Blue
Civil society could provide input	Grey		Blue	Blue
Civil society was informed of the plan	Grey	Blue	Blue	Blue
No consultation	Grey	Blue	Blue	Blue
	Action Plan 1	Action Plan 2	Action Plan 3	Action Plan 4

South Africa holds the distinction of being a founding member of OGP and former chair of the OGP Steering Committee. However, South Africa faces challenges in developing strong national OGP processes and delivering ambitious commitments that meet the expectations of civil society partners. In particular, the 2019 general elections contributed to a pause in open government efforts after the 2016 action plan. The Department of Public Service and Administration’s (DPSA) submission of an action plan in 2020 marks a revitalization of the OGP process. South Africa’s co-creation of its fifth action plan in 2022 presents the opportunity to build on this momentum and further consolidate OGP institutions and processes. The fifth action plan also provides a platform for government and civil society to coalesce around and act on shared priorities such as implementing recommendations from the [Africa Peer Review Mechanism](#) and [Zondo Commission](#) reports.

In support of these efforts, the IRM recommends that South Africa focuses its attention on strengthening coordination across relevant government agencies and collaboration between government and civil society. The IRM highlights the following recommendations:

1. DPSA establish a space for ongoing dialogue between implementing agencies and civil society partners on commitment design and implementation.
2. DPSA work with civil society partners to organize a transparent and inclusive co-creation process with a clear timeline and opportunities to get involved.
3. DPSA provide a reasoned response on how stakeholder contributions were considered during development of the action plan.
4. DPSA or another partner update and maintain the South African OGP website and repository to ensure a transparent OGP process.
5. DPSA establish mechanisms for collaborative oversight of implementation progress between responsible government agencies and civil society partners.

RECOMMENDATIONS

Recommendation 1: DPSA establish a space for ongoing dialogue between implementing agencies and civil society partners on commitment design and implementation.

South Africa’s 2020 action plan [was designed](#) by thematic working groups with government and civil society members. However, there remains room to strengthen coordination and ownership of reforms across relevant agencies. There is also opportunity to establish a collaborative and transparent process to include civil society as equal partners in action plan

development. South Africa has [faced obstacles](#) to establishing a formal OGP multistakeholder forum (MSF). Therefore, the IRM recommends that DPSA establish a high-level ministerial council to coordinate government action along with a flexible platform that enables ongoing dialogue between government and civil society.

This platform could provide a space for working group members to convene with a broader set of interested government and nongovernment participants to discuss commitment design and implementation. If potential commitments will require reviewing or passing legislation, parliamentary staff or representatives should participate in the dialogue from an early stage. In establishing this space, South Africa is encouraged to strive for the full ambition of Standard 1 in the updated [OGP Participation and Co-Creation Standards](#). At a minimum, all members are obligated to create a space for ongoing dialogue that meets at least once every six months. The basic rules on participation must be made public.

As an example, the government of Georgia established a flexible and informal [OGP Forum](#) with broad membership across implementing agencies and civil society. Later, Georgia also established a high-level [OGP Inter-Agency Coordination Council](#) with formal membership from government and civil society. The Forum provides a space for a wide variety of interested stakeholders to participate in open government reforms. The Forum drafts the action plan and supports implementation and monitoring. The Council enables coordination and monitoring of reforms across government institutions. The rules for governance, membership, and both bodies' mandates are available online.

Recommendation 2: DPSA work with civil society partners to organize a transparent and inclusive co-creation process with a clear timeline and opportunities to get involved.

Commitments submitted under [South Africa's 2020 action plan](#) indicated potentially ambitious reforms in policy areas of national importance. However, the timing of action plan development resulted in the submission of a plan [that reflected](#) ongoing discussions rather than finalized commitments. The IRM recommends that DPSA work with key civil society partners to organize a transparent and inclusive co-creation process with a clear timeline and opportunities to get involved.

Standard 3 in the updated [Co-Creation Standards](#) requires that members provide inclusive and informed opportunities for public participation during development of the action plan. To meet the minimum requirements, DPSA should:

- Publish on the OGP website/page the co-creation timeline and an overview of the opportunities for stakeholders to participate at least two weeks before the start of the action plan development process. [Morocco](#) and [Jordan](#) serve as examples.
- Conduct outreach activities with stakeholders to raise awareness of OGP and opportunities to get involved in the development of the action plan, as undertaken by [Côte d'Ivoire](#).
- Develop a mechanism to gather inputs from a range of stakeholders during an appropriate period for the chosen mechanism. National laws and international best practices should serve as a reference to determine 'appropriate period.'

Recommendation 3: DPSA provide a reasoned response to stakeholders on how their contributions were considered during development of the action plan.

During development of South Africa's 2020 action plan, stakeholders [presented and approved](#) draft commitments in a meeting. For the forthcoming co-creation process, DPSA is encouraged to go a step further in facilitating transparent and ongoing dialogue. To do so, DPSA could aim to publish stakeholder input on the action plan content and the government's response throughout the co-creation process. For example, DPSA could publish meeting minutes that capture discussion of stakeholder input on South Africa's OGP website throughout the co-creation period.

To meet the minimum requirements for Standard 4 in the [Co-Creation Standards](#), DPSA should document input on the action plan from stakeholders. DPSA should also either report back or publish information on how stakeholder contributions were considered before the action plan is finalized. Examples include [Canada](#) and [Morocco's](#) reports, which outline the input received as well as the reasons that input was or was not included in the action plan.

Recommendation 4: DPSA or another partner update and maintain the South Africa OGP website and repository to ensure a transparent OGP process.

While South Africa has an [OGP website](#), it has not been updated since 2016. OGP encourages members to practice maximum transparency to enable participation and accountability throughout the OGP process. In particular, countries must maintain an up-to-date OGP website that either functions as or is accompanied by a repository ([Standard 2](#)). Maintaining an OGP website and repository is essential to meeting the updated standards' minimum requirements, as countries must demonstrate that:

- The OGP website contains the latest action plan,
- They published on the OGP website/page, at least two weeks in advance, a co-creation timeline with/and information on opportunities for stakeholders to participate,
- They published basic rules on participation in the MSF,
- The repository includes at least one piece of evidence of co-creation and one piece of evidence of implementation from the past six months, and
- They documented input received from stakeholders on the action plan.

The IRM therefore recommends that South Africa update the existing website or establish a new site run by the government or civil society. Members' OGP websites can be within a government website, stand alone, or make use of a free platform such as Trello. If the website does not also function as a repository with evidence of co-creation and implementation, then it can be linked to a Google Drive or DropBox that serves this purpose. Examples of comprehensive OGP websites include [Morocco](#), [Tunisia](#), and [Jordan](#).

Recommendation 5: DPSA establish mechanisms for collaborative oversight of implementation progress between responsible government agencies and civil society partners.

Conversation between government and civil society on the 2020 action plan continued after the co-creation period. However, current information suggests that implementation lags behind expectations. To ensure strong implementation as seen in South Africa's [past action plans](#), DPSA should establish mechanisms for [joint oversight](#) of implementation progress. The IRM recommends the continuation of commitment-specific working groups that bring together implementing agencies and civil society partners. In addition, all stakeholders should

convene *at least* twice a year to present progress on implementation of the action plan and for the government to collect comments, as outlined under [Standard 5](#).

Strong commitment design also facilitates implementation and accountability. For the fifth action plan, drafters should design commitments with specific, measurable, and timebound milestones to strengthen implementation and monitoring. The IRM is available to offer a commitment design workshop to provide guidance on draft commitments. Draft action plans can also be shared with the OGP Country Support contact for input.

Section II: Action Plan Design

AREAS OF OPPORTUNITY FOR COMMITMENTS

South Africa's fifth action plan provides a platform for government and civil society to coalesce around and act on shared priorities such as implementing recommendations from the [Africa Peer Review Mechanism](#), [Financial Action Task Force](#), and [Zondo Commission](#) reports. Opportunities to address national priorities in the next plan include open contracting, whistleblower protections, beneficial ownership transparency, open data, and access to justice. Ambitious commitments across these areas would likely require revising and passing legislation. Therefore, DPSA and civil society organization partners should consider a strategy to involve parliament from early stages and strategically advocate for legislative reforms.

AREA 1. Open Contracting

Under previous plans, South Africa achieved notable budget transparency through the [Velukemali portal](#). The [2020 action plan](#) aimed to translate budget transparency to greater public accountability over government spending. In pursuit of this objective, the IRM recommends that South Africa focus on open contracting reforms, as highlighted in the [Zondo Commission findings](#). For example, depending on where there are windows of opportunity, the National Treasury could use the next action plan to:

- Develop and execute a strategy to **address civil society comments and review the content of the draft Public Procurement Bill** to strengthen transparency, participation, and accountability elements through a participatory approach. In particular, drafters [could specify](#) comprehensive disclosure requirements, limit use of confidentiality clauses, provide for real-time monitoring and sanctions, and protect whistleblowers.
- Work with Parliament to **pass the Public Procurement Bill** and undertake a participatory approach to **draft the implementing regulations**.
- **Establish a Public Procurement Regulator and Tribunal** through steps such as securing funds and resources, institutionalizing its independence, and implementing a code of conduct.
- Collaborate with civil society to **create an open contracting portal** in alignment with the [Open Contracting Data Standard](#), along with **channels to anonymously report suspected corruption**, as demonstrated by [Ukraine](#). Consider starting with high-risk sectors, as [Colombia](#) did for emergency COVID-19 procurement or as Panama did for large infrastructure projects in [2017](#) and [2021](#).
- Implement [President Ramaphosa's commitment](#) to set aside 40 percent of government procurement to women-owned businesses, such as **establishing mandatory requirements for gender inclusion** and **enabling public buyers to search the**

Central Supplier Database for women-owned businesses, as illustrated [by Kenya](#).

- Review and pursue opportunities for commitments on open data, whistleblower protections, and beneficial ownership transparency to reinforce open contracting efforts.

See OGP's [Open Contracting Fact Sheet](#) and [Transparency International's Guide](#) for more examples and recommendations.

AREA 2. Whistleblower Protections

The IRM recommends that DPSA and partners design a commitment with specific activities that build toward submitting a draft bill to parliament. Future commitments could then aim to implement and disseminate the new whistleblower legislation. For example, the forthcoming action plan could include specific milestones in which DPSA:

- Convenes experts from in and outside of government to **review existing legislation and its gaps and international best practices**, such as [Transparency International's Guide](#).
- **Develops and undertakes a consultation process** with a clear timeline and opportunities for input from a broad range of stakeholders to draft legislation.
- **Creates an advocacy strategy to build a coalition** of government and nongovernment champions, particularly in parliament, to support the bill's eventual passage.

The [Zondo Commission's](#) findings underscore the critical role a national whistleblower protection law would play in strengthening South Africa's anti-corruption regime. The next action plan presents a space for DPSA to convene civil society, Chapter Nine Institutions, and others to collaboratively develop a law to broaden and standardize whistleblower protections. [Several OGP members, such as Latvia](#), demonstrate how action plans can be leveraged to advance whistleblower legislation. If the law is successfully implemented, South Africa would be the first African member to implement whistleblower legislation through its OGP action plan.

AREA 3. Beneficial Ownership Transparency

The [Zondo Commission](#) and COVID-19 pandemic have reinvigorated efforts for beneficial ownership transparency. The fifth action plan presents the opportunity to capitalize on this momentum and coordinate stakeholders to fulfil South Africa's commitment to the [G20 Beneficial Ownership Principles](#) and recommendations in South Africa's recent [APRM Review](#) and [FATF Mutual Evaluation](#) reports.

The IRM recommends that the South African Anti-Corruption Task Team either consider a stand-alone commitment or strengthen beneficial ownership transparency as part of open data and procurement commitments. Potential activities to fulfil existing domestic and international obligations include:

- **Finalize, pass, and implement the [Companies Amendment Act](#)** to establish a legal framework for a robust and transparent beneficial ownership regime.
- **Co-create best practice and guidance documents and training** to facilitate the collection, verification, and storage of beneficial ownership information in preparation for implementation of the Act.

- With open data partners, **identify the responsible agency and develop technical tools** in support of the eventual development of a centralized registry in fulfilment of [FATF's revised recommendation 24](#).
- Prioritize developing clear institutional and data processes to collect and publish beneficial ownership information for **companies participating in public procurement**, as emphasized by the [Zondo Commission findings](#).
- **Build and partner with a coalition of private sector allies** by communicating the business case for transparency of beneficial owners, as [demonstrated by Nigeria](#).
- Strengthen processes to assess and monitor **high-risk sectors** or facilitate **information sharing within and across governments**.

AREA 4. Open Data

IRM recommends that DPSA, [Open Data South Africa](#), and partners evaluate opportunities for the OGP process to align, reinforce, or expand existing open data reforms. DPSA should communicate to relevant departments that South Africa's OGP process provides a platform for open data initiatives to be undertaken through a multi-stakeholder approach, promising wider ownership and uptake of reforms in and outside government. Commitment drafters should consider which departments would be engaged partners when designing the commitment, to ensure government involvement matches civil society efforts. Possible avenues for an open data commitment include:

- Leveraging the OGP process to **align open data efforts across government**, such as DPSA's Digital Transformation Strategy and the Department of Communications and Digital Technologies' draft [National Data and Cloud Policy](#), and to create a national open data strategy. [Tunisia](#), [Morocco](#), [Jordan](#), and [Costa Rica](#) have all used the OGP process to develop an open data strategy in partnership with civil society.
- Working with the Department of Planning, Monitoring, and Evaluation and the Department of Cooperative Governance and Traditional Affairs to **expand government transparency and civic participation elements of the [District Development Model](#)** in support of intragovernmental data-sharing efforts. [Canada's](#) commitment provides an example of data sharing across levels of government, and [Morocco](#) is currently advancing open data at the local level.

DPSA, [Open Data South Africa](#), and partners could **develop tools and frameworks to support data sharing to address sector-specific policy problems**. These tools could be piloted with data that advances other commitments in the action plan, such as beneficial ownership, access to justice, or open contracting data. [Nigeria](#), [Kenya](#), and [Tunisia](#) have recently committed to implementing the [Open Contracting Data Standard](#). Countries with commitments to publish [beneficial ownership data](#) include [Nigeria](#) and [Kenya](#). In 2019, [Sierra Leone](#) committed to aggregate data to inform community justice service provision. Drafters are encouraged to use the [Anticorruption Commitment Creator](#), developed to help draft open data commitments that combat corruption.

AREA 5. Access to Justice

South Africa's [2016 commitment](#) advanced the conversation around the sustainability and regulation of Community Advice Offices (CAOs). The Department of Justice (DOJ) and [Community Advice Offices South Africa](#) (CAOSA) could leverage the 2022 action plan to formally recognize and ensure the sustainability of CAOs. The IRM recommends that the DOJ and the access to justice focus group convened by CAOSA consider using the OGP process to:

- **Draft and submit to parliament CAO legislation**, as highlighted by the [2020 CAO National Consultative Workshop](#) and [2022 South Africa Law Review Report](#). A commitment that changes government practice by formally supporting CAO efforts could represent an ambitious open government reform.
- **Strengthen CAOs' justice service provision for victims of gender-based violence**, poverty, and inequality, in alignment with the [APRM 2021 report](#) recommendations. These efforts could be reinforced by activities within an open data commitment that develop tools to collect and analyse data toward a specific policy problem, such as determining the number of victims seeking after-hours legal support.

Several community justice commitments demonstrate the benefits of strong collaboration between government and civil society. North Macedonia [increased access to justice](#) for marginalized communities, including victims of gender-based violence, through a [2018 commitment](#). In 2020, Albania [committed](#) to establishing an interinstitutional forum to continuously improve legal aid services. In Africa, [Sierra Leone](#) and [Kenya](#) are currently implementing community justice commitments. After submission of the plan, South Africa could join members implementing [access-to-justice commitments](#) in the [OGP Coalition on Justice](#).

AREA 6. Political Party Finance Transparency

The fifth action plan presents a space to organize stakeholders around strengthening implementation of the 2021 [Political Party Funding Act](#). Such a commitment could aim to increase the number of political parties complying with the Act along with the scope of information being disclosed. Milestones could strengthen the [Electoral Commission's](#) ability to investigate and sanction political party funding transgressions and noncompliance with disclosure requirements. For example, the Commission and the [Political Party Funding Coalition](#) could implement recommendations identified in the [2022 Political Party Funding Act Symposium](#), such as:

- **Establish diverse complaint channels and raise awareness** so that civil society, journalists, and the public are empowered to report transgressions.
- Coordinate with the Financial Intelligence Centre (FIC), the National Prosecution Authority, civil society, and the media to **cultivate an ecosystem of compliance**.
- **Establish regulations that require broad disclosure** such as information on shareholders and subsidiary companies.
- **Collaborate with beneficial ownership transparency advocates** to advance reforms that facilitate the Commission's work to identify the true source of political party donations.
- Partner with open data champions to **make political party financing data accessible, searchable, and visualized** through charts and graphs.
- **Ensure adequate financial resources from the National Treasury** for the Commission to investigate political party finance transgressions.

Undertaking a political party finance commitment would place South Africa at the forefront of African OGP members in this policy area. For examples from other regions, South Africa can look to [Croatia's 2018 commitment](#), which improved the legal and institutional framework and created an IT system for public monitoring of campaign funding. This improved the quality of data submitted by candidates and political parties and enabled public access. [In 2014, Georgia published](#) political party income and expenditures in accessible formats, allowing civil society

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and the media to conduct research and advocacy. More examples and recommendations can be found in Transparency International's [guide for political financing in OGP action plans](#).