

Independent Reporting Mechanism

Brazil Co-Creation Brief 2023

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 Brazil's sixth 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 the country's context and presents recommendations. These recommendations are suggestions, and this brief does not constitute an evaluation of a particular action plan. Its purpose is to inform the planning process for co-creation based on collective and country-specific IRM findings. This brief is intended to be used as a resource as government and civil society determine the next action plan's trajectory and content. National OGP stakeholders will determine the extent of incorporation of this brief's recommendations.

The co-creation brief draws on the results of the research in prior [IRM reports for Brazil](#) and draws recommendations from the data and conclusions of those reports. The brief also draws on other sources such as [OGP National Handbook](#), [OGP Participation and Co-creation Standards](#), and IRM guidance on [the assessment of OGP's minimum requirements](#) and [the minimum threshold for "involve"](#), to ensure that recommendations provided are up-to-date in light of developments since those IRM reports were written, and to enrich the recommendations by drawing on comparative international experience in the design and implementation of OGP action plan commitments as well as other context-relevant practice in 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).

The IRM drafted this co-creation brief in July 2023.

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Section I: Action Plan Co-Creation Process

Brazil is one of the eight countries that co-founded Open Government Partnership (OGP) in 2011. Since then, the open government community in Brazil has evolved and strengthened while simultaneously facing significant challenges, from major corruption scandals to a presidential impeachment and political polarization. Throughout the years, Brazil's multi-stakeholder forum (MSF), the Working Group for Open Government (GT), has striven for horizontal collaboration from different actors, including the government, civil society, academia, private sector, and the public in general. One noteworthy activity is that, at the beginning of the co-creation processes in the past, the government has indicated its thematic priorities, and the GT has held consultations to allow the public to indicate their thematic priorities. Carrying out these two separate processes has ensured that the priorities of both groups are represented in the action plan. In addition to these initial consultations, in the co-creation of its fifth national action plan, the GT conducted two consultation processes in further stages of the co-creation process to increase citizen participation.

Brazil co-created and implemented its fifth national action plan during the COVID-19 pandemic, which brought about significant challenges. In addition, Brazil held national elections in October 2022. Thus, the GT decided that the commitments in the action plan should be fulfilled by December 2022; a timeframe that was also challenging. Its next action plan is an opportunity for the Brazilian open government community to focus on the implementation of ambitious commitments with a longer timeframe. Thus, the IRM recommends the following:

1. Providing reasoned written response to public and civil society contributions in all stages of the co-creation process.
2. Designing commitments with ambitious targets.
3. Involving diverse levels and branches of government in the co-creation process.
4. Involving single-issue and local-level civil society organizations.

RECOMMENDATIONS

Recommendation 1: Providing reasoned written response to public and civil society contributions in all stages of the co-creation process

In this co-creation cycle, Brazil should build on its previous process and continue offering opportunities for citizen engagement throughout the co-creation process. Opening public consultations during several stages of the process results in a more inclusive action plan. Nonetheless, it is important that following public consultations the Office of the Comptroller General (CGU) provides reasoned written response to public and civil society contributions covering all stages of the co-creation process. To ensure continued public and civil society engagement, CGU can offer written feedback that explains the reasons behind the inclusion, amendment, or rejection of proposals. These are a few concrete recommendations for providing detailed written feedback:

- A table that includes all proposals made and provides an explanation for the inclusion or rejection of each proposal. Examples of this approach are [Argentina's](#) and [Estonia's](#).
- A summary of stakeholders' consultations, including how the MSF addressed public and CSO input. [Finland](#) and [Canada](#) have adopted this approach.
- Publicly available drafts of commitments and action plans that allow the public to easily track the proposed changes.

Recommendation 2: Designing commitments with ambitious targets

The co-creation and implementation of Brazil's fifth action plan was affected by COVID-19 and the national election in 2022. This new action plan cycle is an opportunity to thoroughly assess where Brazil stands and co-create an action plan that prioritizes ambitious commitments in a few selected areas rather than addressing many new thematic areas. A few steps that the MSF can take include:

- Assessing which of the commitments in the previous action plan can be carried over into the sixth action plan to ensure their effective implementation and to deepen their impact on their respective policy areas. This is an opportunity to revisit their implementation metrics and milestones and to strengthen them by engaging new civil society organizations (CSOs) into their redesign and monitoring.
- Analyzing the thematic areas in which Brazil can delve deeper and commit to more ambitious reforms. In its 12-year trajectory in OGP, Brazil has advanced foundational reforms in key topics. For instance, [Brazil mandates the collection and publication of data on corruption-prone areas](#). Nonetheless, the country is in a position to strive for more advanced reforms in this and other areas. For instance, it can commit to ensuring that the data that is collected and published [has high-value, usability, and interoperability elements](#). As a useful tool, the MSF can refer to maturity models in different policy areas to assess how to advance more ambitious reforms. OGP has created [maturity models](#) for several policy areas.
- Drafting commitments that have clear and verifiable milestones, a clear strategy to achieve them, and that keep a focus on open government values. The IRM is available to provide design workshops focused on drafting results-oriented commitments.

Recommendation 3: Involving diverse levels and branches of government in the co-creation process

The co-creation process of the fifth action plan gave three groups the opportunity to indicate their thematic priorities. The groups were: the federal government, other branches of government, and civil society. The [methodology](#) that the GT designed for the co-creation of the sixth action plan also foresees active participation from the government in thematic definition but clusters the federal government and other branches of government into one group. This might lead to some branches or levels of government participating more than others and some government agencies not participating at all. The GT should make sure that the thematic suggestions from government come from agencies at different levels (federal, state, and municipal) and branches of government (executive, legislative, and judiciary). The judiciary and legislative branches could draft and take ownership of specific commitments within their realm. This is applicable not only for the National Congress and courts but also the local tribunals and legislative assemblies. The National Congress could even develop its own action plan. The GT should widely broadcast that all branches and levels of governments are encouraged to participate in the process.

Available Resources:

- [OGP: Options and Recommendations for Parliamentary Engagement](#)

Recommendation 4: Involving single-issue and local-level civil society organizations

CSOs have actively participated in Brazil's OGP process. Nonetheless, most of the CSOs that are continually engaged tend to be national-level or international organizations. The IRM recommends that the GT reaches out to local and single-issue-focused CSOs that are not formally a part of the MSF to invite them to participate in the co-creation and implementation

process. Brazil's OGP process could be strengthened by engaging CSOs beyond the "usual suspects" and benefit from their specific expertise in particular areas or commitments.

Due to budget constraints, smaller CSOs often face challenges in participating in lengthy processes involving numerous meetings. To address this issue, the MSF could provide CSOs with opportunities for various levels of engagement. These levels could range from direct involvement in drafting action plans to monitoring specific commitments within their areas of expertise, as well as participating in the earlier phase of defining thematic priorities. This approach aims to ensure that CSOs of different sizes can actively participate in the process.

Section II: Action Plan Design

AREAS OF OPPORTUNITY FOR COMMITMENTS

With the upcoming co-creation process, Brazil has an opportunity to assess the status of open government reforms on different topics and define which areas can be addressed in greater depth and which areas need course-correction. The IRM recommends that Brazil considers addressing the following thematic areas in its next action plan:

1. Climate change, environmental policy, and natural resources
2. Second generation problems on right to information
3. Whistleblower protection
4. Access to justice for marginalized groups
5. National-local articulation on open government

AREA 1. Climate change, environmental policy, and natural resources

Brazil has shown a strong commitment toward transparency, participation, and accountability around natural resources. The fifth action plan included two commitments in this regard: one on environment, forest, and open data, and another one on federal environmental licensing. The next action plan is an opportunity to follow up on these commitments and to use the OGP platform to realize some of the current administration's policy goals.

One such goal is ratifying and implementing the Escazu Agreement. Currently, there is momentum and political will to move this initiative forward in Brazil. OGP is an ideal platform to strengthen the implementation of the Agreement, as it provides an opportunity to co-create implementation routes, coordinate collaboration between different levels and branches of government, and strengthen the use of transparency and access to information tools. Furthermore, the IRM is an accountability mechanism that can help Brazil comply with its obligations under the Agreement.

Several countries in Latin America have used their OGP action plans to support their efforts in this matter. In 2019, in its first action plan, [Ecuador](#) included a commitment to strengthen its environmental governance mechanisms and comply with the Agreement. That same year, [Mexico](#) included a commitment on forest, water, and fisheries management based on the Escazu Agreement. More recently, in 2021, [Panama](#) committed to strengthening its National Environmental Information System based on the standards set out in the Agreement. And in 2022, [Argentina](#) committed to bolstering public engagement in environmental decision-making in compliance with the Agreement.

Apart from ratifying and implementing the Escazu Agreement, other reforms that Brazil could undertake in this realm include:

- Providing legal assistance to environmental activists and human rights defenders affected by strategic lawsuits against public participation (SLAPPs).
- Ensuring that there are no obstacles for environmental CSOs and watchdog organizations to register and operate freely.
- Implementing mandatory citizen audits and social and environmental impact assessments of energy and infrastructure projects.

Useful resources:

- OGP (2023): [Open Government and the Escazu Agreement fact sheet](#)
- OGP (2021): [OGP as a key partner in the implementation of the Escazu Agreement](#) (Spanish)
- OGP (2020): [Environmental democracy: a meeting point between open government and the Escazu Agreement](#) (Spanish)

- TI Brazil: [Atlas de Clima e Corrupcao](#)
- Observatorio Regional de Planificación para el Desarrollo (2021) [Las sinergias entre el gobierno abierto y el Acuerdo de Escazú](#) (Spanish)

AREA 2. Second generation problems on right to information

After years of gridlock, Brazil enacted its Right to Information (RTI) law in 2011. Through its first OGP action plan, Brazil implemented the Federal Access to Information System and fostered the implementation of the RTI law. More than 10 years after its implementation, Brazil could study the strengths and weaknesses of its RTI law and evaluate if it needs to be updated. It is important to assess if Brazil is facing “[second generation](#)” RTI problems, such as if public agencies are overusing or misusing their right to classifying documents, something [CSOs have pointed out](#) in the past. This assessment is also a good opportunity to assess why [transparency levels vary from state to state](#) and what course-correction actions could be taken.

Useful resources:

- OGP: [Broken Links: Right to Information Performance](#)
- Partners that can collaborate on this: Article 19, TI Brazil

AREA 3. Whistleblower protection

[Civic society organizations](#) in Brazil have identified that whistleblower protection policies are key in the fight against corruption and that the country should take swift action in this regard. Thus, Brazil’s MSF can use its next action plan to bolster action on this matter. A few specific suggestions from the IRM include:

- Enabling safe channels to report wrongdoing and retaliation anonymously and raising public awareness of the channels and protection measures available to whistleblowers.
- Publishing aggregate data on the number of complaints received, the measures taken to protect whistleblowers, and the time taken to investigate cases and reach a resolution. Civil society should be able to monitor that investigations into complaints are complete, independent, and timely.

Useful resources:

- OGP: [Open Government Reforms Need to Protect Whistleblowers](#);
- OECD: [Whistleblower Protection](#);
- Czech Republic ([2020–2022](#)), Estonia ([2020–2022](#)), Latvia ([2017-2019](#)), and Spain ([2020–2024](#)) are working on this policy area.

AREA 4. Access to justice for marginalized groups

[Brazil has demonstrated](#) that social inclusion is a priority. Nonetheless, inclusion can only be achieved if marginalized groups have effective access to justice. [Access to justice means](#) that “individuals and communities with legal needs know where to go for help, obtain the help they need, and move through a system that offers procedural, substantive, and expeditious justice.” In its upcoming action plan, Brazil can commit to access to justice reforms targeted at specific groups such as indigenous communities, women, people living in poverty, members of the LGBT+ community, people with disabilities, and rural communities, among others.

As a reference, some OGP countries have used their action plans to advance reforms in this regard. In 2020, [Sierra Leone](#) committed to strengthen coordination between formal and customary justice mechanisms and increase availability of community paralegals. [Indonesia](#) committed to expand accommodations for people with disabilities and improve legal aid to marginalized communities through a real-time portal and updated guidance for providers. [North Macedonia](#) increased resources for legal aid centers geared to aid the marginalized Roma community, which has helped to address discrimination.

Useful resources:

- OGP: [Justice Policy series](#)
- [OGP Coalition on Justice](#)
- OGP: [Skeptic's Guide to Open Government: Access to Justice](#)
- OGP: [Justice fact sheet](#)
- Partners that can provide technical support: [Red Internacional de Justicia Abierta](#) (RIJA), [Pathfinders for Peaceful, Just, and Inclusive Societies](#)

AREA 5. National-local articulation on open government

Several local governments in Brazil have implemented successful open government reforms within the [OGP Local](#) program and beyond. Brazil's federal structure has allowed for states and municipalities to carry forward innovative approaches under different political parties. Nonetheless, these initiatives have been isolated efforts. Brazil could greatly benefit from a strategy to articulate and institutionalize local open government processes so that they are not subject to political changes and are carried on under OGP's standards and values. This strategy can strengthen Open State by incentivizing greater participation from local governments and fostering exchange of experiences.

A few concrete ways to carry forward this strategy are:

- Creating standards for local open government reforms.
- Establishing a peer review mechanism where states and municipalities implementing open government reforms exchange experiences and good practices.
- Fostering collaboration and coordination through a network or community of practice engaging national and local institutions and civil society towards enhancing peer learning.
- Providing technical support to political candidates running on an open government platform.

As a reference, a few countries in Latin America have taken this approach. In its fourth OGP action plan, [Argentina](#) committed to co-creating a Federal Open Government Program that articulates open government reforms at the national, provincial, and municipal levels. For its part, [Mexico](#) will do an assessment of institutional openness at the local level to develop a Local Open Government Strategy.

Useful resources:

- Argentina's [Federal Open Government Program](#) (Spanish)
- Mexico's National Institute for Transparency, Access to Information, and Protection of Personal Data (INAI): [Local co-creation](#) (Spanish)