



Open Government Partnership Independent Reporting Mechanism

Action Plan Review: New Zealand 2022-2024 Comments Received

Comments Received from Sacha Green (13 July 2023)

We would like to see greater transparency about why Commitment 3 is unverifiable. Currently it indicates the issue as 'the government lead was identified late in the co-creation process'. We would like it to be included in the IRM report that the co-design process was entered into in good faith by CSOs but a significant challenge was that this process occurred without the involvement of the government agency that was later given the lead role. This meant the co-creation process that had occurred was undermined as the implementation plan and milestones were unilaterally modified by the appointed government lead after the co-creation process with CSOs was concluded. This points to the need for the active involvement of government agencies across the commitments and throughout the co-creation process. It also reflects the challenges of getting engagement with government on issues that go beyond the siloes of individual agency responsibility or that sit outside of existing work programmes.

Comments Received from the New Zealand Council for Civil Liberties (14 July 2023)

Dear Co-Chairs of the OGP Steering Committee,

Falling Standards on Co-Creation – IRM Review of New Zealand’s 4th National Action Plan

The New Zealand Council for Civil Liberties participated in the work to develop Aotearoa New Zealand’s fourth National Action Plan (NAP) between 2020 and 2022. We are writing to express our concern about the weakening of the OGP’s standards for co-creation. These weakened standards have resulted in our country being given a pass-mark for co-creation in the Independent Reporting Mechanism’s (IRM) draft Action Plan Review (APR) when, by any normal definition of ‘co-creation’, this did not occur.

We urge the Steering Committee to take action to strengthen the OGP’s Standards for Co-Creation, so that they require that Action Plan commitments are co-drafted by government, civil society and actively involved members of the public. Without this, ‘co-creation’ is a mirage, and we fear the OGP will continue to lose credibility amongst civil society in member countries, damaging the initiative as a whole. We still believe the OGP is a valuable initiative that has resulted in significant good outcomes for people around the world. But our experience of it in Aotearoa New Zealand is depressingly poor. Unless the OGP strengthens its standards for Participation and Co-creation, and the government of our country takes concrete steps to demonstrate its commitment to co-creation and funding NAP commitments adequately, the promise of the OGP will remain unfulfilled here.

This letter also constitutes our comments on the draft APR to the IRM.

Background

We participated in the two year process to develop Aotearoa New Zealand's fourth NAP, along with a number of other civil society organisations (CSOs). It was notable how a number of them dropped out during this process as they became disillusioned with it and felt the prospects of meaningful return on the time they were investing in it were too slim. The development period was extended by a year in 2021, following our March 2021 request to the government that they do this.¹ The OGP granted the extension in August 2021.²

Although the process was poorly designed and unnecessarily time-consuming, the government officials in the department leading the process worked in good faith until mid-September 2022, when any semblance of joint development of the Action Plan came to an end. Where the process fell far short was during, and subsequent to, workshops organised by the Public Service Commission (PSC) from April to July 2022 to develop potential commitments.

Most government departments who had been identified in potential commitments put forward by civil society did not participate in these workshops. For example, the Ministry for the Environment did not participate in discussions to consider the potential for a commitment on exploring accession to the Aarhus Convention; the Department for Internal Affairs did not participate in discussions regarding a commitment on equitable non-digital access to public services; and the Ministry of Justice did not participate in discussions regarding what is now commitment seven.

However, the situation worsened after the end of the workshops in July 2022. The PSC's clearly stated intention was that after these workshops had been completed, the potential lead government agency for each fledgling commitment would work with the interested CSOs between mid-July and the end of August to jointly draft the commitments that would be put forward for inclusion in the NAP.³

The PSC's note of the meetings held on 6 and 13 July 2022 concludes thus:

TKM outlined the next steps about the process.⁴ The commitments which have been agreed upon will be now worked in small groups of agency reps, CSOs, EAP over the next few weeks. The TKM topic leads will organize this.

This did not happen.

Most civil society organisations were not contacted by a single government agency to discuss the drafting of any of the potential commitments. The two exceptions were that the PSC met with the Citizens Advice Bureau to discuss what is now commitment 3, but this was mostly about the lack of a department being willing to take on the commitment. We also understand that the Serious Fraud Office met with Transparency International to discuss what is now commitment 4, but that it refused to amend any aspect of this pre-existing work programme.

We need to be very clear that the co-creation process did not stall because CSOs failed to work with government agencies on drafting commitments. Co-creation failed because

government departments refused to meet with CSOs between mid- July and early September 2022 to draft commitments.

The PSC met with CSOs in early September 2022, but there was no indication then that departments would be instructed by ministers to meet with CSOs. Instead CSOs requested copies of the partially completed commitment templates from the PSC. We then completed drafting them and sent them back to the PSC.⁵

Still, the relevant agencies refused to meet with the CSOs to discuss the draft commitments. Instead they provided written comments which defended the status quo and, in some cases, (such as the proposed commitment to explore accession to the Aarhus Convention) inaccurately asserted that there was no need to undertake the commitment at all because existing measures were comparable.

When the government agencies that will be leading potential commitments refuse to meet with the CSOs involved in NAP development, co-creation of the NAP cannot have occurred.

Draft Action Plan Review

While noting civil society dissatisfaction with the process to develop the NAP, the draft APR nevertheless gives the New Zealand government a passing grade for the process of co-creating the Action Plan (with details in Appendix 2 of the Review).

We were shocked and deeply disappointed to read this. We disagree with the conclusion that co-creation took place. Our experience is clearly that government agencies refused to co-create commitments with civil society. Out of the eight commitments only one was jointly drafted (commitment 3). Joint drafting of commitments is what we expect in terms of ‘co-creation’.

The APR’s conclusion regarding co-creation is not, however, a reflection on the IRM Reviewer, who has to assess what took place against the OGP and IRM’s standards, but on how weak the OGP’s standards for co-creation now are. The current standards effectively only require consultation.

Weakening of OGP Standards for Co-creation

Previous co-creation standards and OGP guidance have said that while it was acceptable for new OGP members to be at the ‘involve’ level of the IAP2 Spectrum of Public Participation, more experienced members should be further up the spectrum, achieving at least the ‘collaborate’ level:

Countries are expected to improve the quality of each cycle of the national OGP process, complying with more of the advanced steps outlined in these standards and moving from consult to collaborate on the IAP2 Spectrum.⁶

Or, as the OGP’s *Participation and Co-Creation Toolkit* put it:

The Participation and Co-creation Standards seek to ensure that all OGP participants operate at least at the level of "Consult", but push to reach the levels of "Collaborate" and even "Empower".⁷

The statement in the 2017 co-creation standards has been removed from the current OGP standards on co-creation, and the 2018 Toolkit has been deprecated. This means that the IRM Reviewer is unable to hold the New Zealand government even to those loosely couched expectations. When we review the criteria in Table 2 of Annex 2 of the draft Action Plan Review, it is clear that the 'minimum requirements' are now skewed away even from 'involve' and towards the lower 'inform' and 'consult' levels of the IAP2 Spectrum. These are what Sherry Arnstein, in her 1969 paper *A Ladder of Citizen Participation*, categorised as 'tokensim'.⁸

We understand the desire of the OGP and IRM to focus on the quality of commitment design rather than the previous emphasis on procedural elements. However this NAP should fail even those standards since, in spite of starting to elaborate the commitments using the OGP's commitment template, the government then reverted to the format used in the 2018-2022 NAP. Consequently it fails to explain each commitment's intervention logic or theory of change. It seems clear to us this was done in a hurry because, despite the 12 month extension granted by the OGP, agencies had not done the work, with civil society, to elaborate the intervention logic and milestones for design of high-quality commitments. The draft commitments CSOs sent back to the PSC in September used the OGP template, supplemented with initial comments on how the commitments honour Te Tiriti o Waitangi. The final result is that, yet again, we have a NAP filled with commitments that are either unambitious, meaningless, or are existing programmes of work with no 'stretch goals' added to reflect what being added to a NAP should require.

Overall, the revised IRM assessment framework and co-creation standards effectively do not require meaningful co-creation, which undermines the likelihood of Action Plans containing well-designed commitments that will deliver meaningfully beneficial outcomes. Instead they allow – almost require – CSOs to spend endless (uncompensated) time in workshops without there being any meaningful sharing of the power to determine what the commitments in the NAP will be or say. New Zealand government officials strangely seem to think the country somehow has constitutional arrangements that prohibit this, and that its government decision making processes are quite unlike any other OGP member country. This is not the case.

We do not think it is unreasonable to expect that when the PSC tells government agencies they should be working with CSOs to draft the NAP commitments, that is what should happen. We do not think it is unreasonable to expect that 'co-creation' means concrete, meaningful, negotiation over the drafting of the commitments. This is clearly the spirit of co-creation that the OGP aspires to. Its research shows that better commitments result from them being jointly drafted by government and civil society.

But by watering down its published standards for co-creation, the OGP has disempowered its own IRM Reviewers and, by extension, civil society in the member countries.

The OGP Theory of Change

The OGP is predicated on the idea that member country governments are motivated to work with civil society to co-create NAPs. Motivation can either be intrinsic or extrinsic. The OGP's strategic stance of 'more carrot than stick' assumes that countries that join the OGP and pay the membership fee have a strong intrinsic motivation to use the OGP NAPs as tools to deliver better public services, policy and governance by using the open government pillars of access to information, public participation and accountability.

The extrinsic motivation of member countries stems from the potential for reputational harm resulting from the accountability provided by the IRM reports and the OGP's procedural review processes. For the potential harm to be meaningful however, requires two core components: meaningful standards that countries have to adhere to, and a rigorous IRM review to assess if those standards have been met. If the standards are weak however, not even a rigorous IRM review can provide meaningful accountability.

New Zealand CSO's experience of the OGP Theory of Change

The OGP will be aware that previous IRM reviewers' reports have not been complimentary regarding New Zealand's performance, particularly with regard to NAP co-creation or the ambition of its commitments. CSOs have repeatedly had extensive demands made on their time by NAP co-creation processes, with very little return on the time and energy invested by them

There has been almost no visible ministerial leadership to indicate intrinsic motivation, and clearly the accountability meant to be provided by IRM reports has failed to provide sufficient extrinsic motivation to create NAPs with ambitious commitments that have been genuinely co-created. It is as if New Zealand became a member almost by accident, and still, after 10 years, doesn't truly understand either what the OGP is, nor how to get the best out of it. The decline in ministerial and official attendance at OGP Summits, along with staff and ministerial turnover perhaps explains this. But if so, the PSC is failing in its statutory duty to steward institutional knowledge.

If intrinsic motivation is fading or absent, it is the potential for public, independently verified, criticism of the process that motivates governments to genuinely undertake co-creation. However, the end-point of this accountability – investigation by the Criteria and Standards Sub-Committee – presumably also has to judge a country's actions according to the OGP's own adopted standards.

We see little point in trying to raise our concerns about co-creation failures with the Criteria and Standards Sub-Committee if the IRM Action Plan Review says that the New Zealand government's process deserves a pass mark. In turn, this damages CSO confidence in the OGP and its processes.

Conclusion

The New Zealand Council for Civil Liberties will monitor the country's membership of the OGP, and may participate in implementation of NAP4 commitments. But given the experience of 10 years of co-creation failure in New Zealand, we are now deeply sceptical that involvement in future Action Plan development will be worth spending our time on. Significant steps must be taken by government if our trust in the process is to be restored.

We must be clear: the award of a passing grade to the government after this farcical process means that there is no incentive whatsoever on the New Zealand government to provide meaningful co-creation of NAPs in future. On the contrary, it is likely to take the message that this is what it can get away with and still avoid IRM criticism for a poor process. We see little prospect therefore in genuine co-creation, or meaningful OGP membership, and without these

we find it difficult to see why we should spend our limited time and energy in contributing to NAP development or other OGP activities.

We hope the IRM will revise its assessment of whether New Zealand's government merits a passing grade for its NAP development process. But if it does not, then it seems clear to us that the whole 'co-creation' process is now a farce and, by endorsing that farce, the IRM – which, frankly, is what gives the OGP any credibility – will itself become tainted. It is difficult to conclude otherwise in light of the minimal engagement by government agencies, and it is even more difficult to understand why the IRM seems oblivious to this.

Our call to the OGP's Steering Committee is this: strengthen the Co-Creation and Participation Standards, so that they require governments to jointly draft commitments with civil society and unaffiliated members of the public who have been involved in the work. Require CSO participation in the decision making on which commitments are included in the Action Plans. Otherwise, the OGP is failing to make real the main promise of its creation: to empower civil society and thereby strengthen democracy and governments' commitment to making civic space meaningful.

Yours sincerely,

Thomas Beagle
Chairperson

Appendix

Suggested corrections to detail of the draft Action Plan Review

Page #	Correction
5	Footnote 4 could be supplemented by listing the CSOs that ceased to participate in the NAP development process: Hui E! (the umbrella body for CSOs in Aotearoa), the Public Service Association (the trade union for public servants), Child Poverty Action Group, and Amnesty International NZ.
5	Repeats the PSC claim that the 2022 workshops were 'open to all', with a citation provided a footnote 7. This is not the case. The workshops were not advertised to the public and only the CSOs who had been participating so far, EAP members, and government agencies were invited. The public was not invited.
5	Footnote 10 points to a previously cited (footnote 6) report by Catherine Williams. This cannot have related to the commitments drafted by CSOs as the Williams report dates from 2021, not September 2022. The draft CSO commitments can be accessed here: https://nzcl.org.nz/wp-content/uploads/CSO_Drafted_Commitments_for_NAP4_combined.pdf

5	Claims that the NAP “ <u>directly</u> included two of the eleven CSO proposals (Commitments 1 and 3)”. It will be seen from the CSO draft of commitment 1 that what was inserted into the NAP is substantially weaker. CSOs called for a commitment that would result in “ <i>adoption of co-designed mandatory minimum standards for consultation</i> ”. This is completely absent from NAP4 commitment 1. CSOs were told by the lead agency (PSC) that it was “too soon” to do work to develop all of government mandatory minimum standards for public consultation.
5	The sentence at the end of the second paragraph, “Efforts under these commitments to address algorithmic transparency and non-digital accessibility of online government services would benefit from setting concrete targets” mis-states the intention of commitment 3. It is not about “non-digital access to online government services”, but about provision of government services through <u>offline</u> channels as well as online ones.

¹ https://nzcccl.org.nz/wp-content/uploads/2021-03-15_Joint_CS_O_Letter_to_Hipkins.pdf

² https://www.opengovpartnership.org/wp-content/uploads/2021/08/New-Zealand_Letter_Extension-Cohort-Shift_20210812.pdf

³ Incidentally, we note that the draft Action Plan Review states, on page 5, that “*After workshops in February 2022, opportunities to meet with lead government agencies and participate in finalising the commitments stalled.*” This needs correction as some government agencies did participate in the April-July workshops, but most did not. It was not until mid-July that opportunities to participate by working with agencies fully stalled.

⁴ TKM is the abbreviation for Te Kawa Mataaho, the PSC’s name in te reo Māori.

⁵ The draft CSO commitments can be accessed here: https://nzcccl.org.nz/wp-content/uploads/CSO_Drafted_Commitments_for_NAP4_combined.pdf

⁶ *OGP Participation and Co-Creation Standards*, section 1.2.1. 2017 edition.

⁷ *OGP Participation and Co-Creation Toolkit*, page 15. Open Government Partnership, 2018

⁸ Arnstein, Sherry R. "A Ladder of Citizen Participation," *JAIP*, Vol. 35, No. 4, July 1969, pp. 216-224. Accessed from <https://lithgow-schmidt.dk/sherry-arnstein/ladder-of-citizen-participation.html>