

Civic Space

Freedom of Assembly

**Open Government
Partnership
Global Report**

DEMOCRACY BEYOND THE BALLOT BOX

Open
Government
Partnership



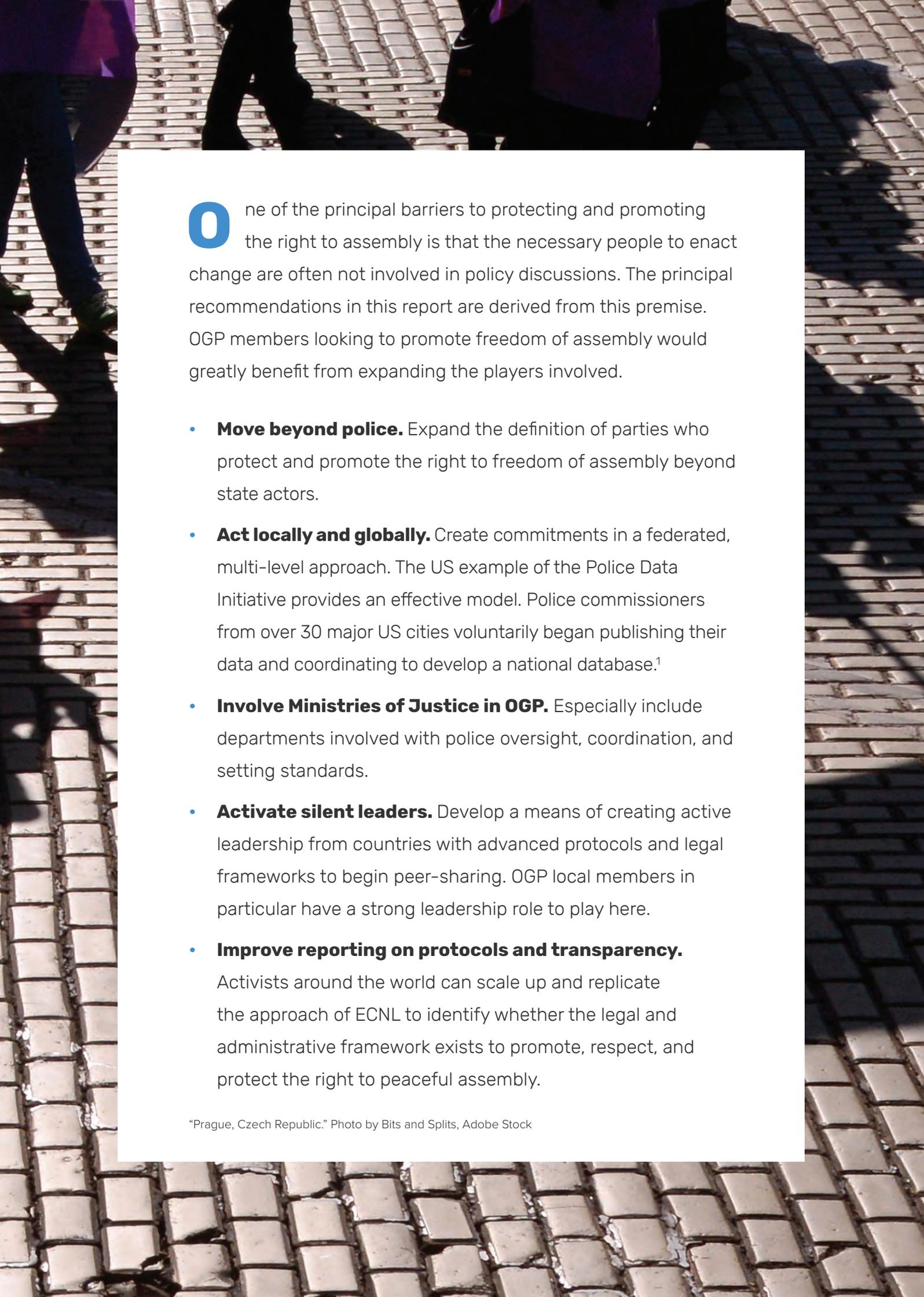
Key points

Peaceful assembly is a bedrock of democratic institutions. It allows people to bring attention to issues, demand change, and get answers from public officials. Without freedom of assembly, there are fewer channels between elections for people to use information and opportunities for participation in open government.

Assessing OGP member countries' work in this space over the last decade, this report concluded the following:

- **All governments have a duty to respect, protect, and promote freedom of assembly.** International covenants, including the Open Government Declaration, oblige all governments to protect and promote people's rights to peacefully protest and assemble.
- **Some protections and commitments related to freedom of assembly remain weak.** About half of all OGP governments have challenges to freedom of assembly, but lack any type of commitments.
- **Restrictions affect demonstrations and protests in some OGP countries. Restrictions include police use of force.** While many OGP countries do not have such restrictions, there has been limited peer interaction.
- **Almost no OGP countries have commitments related to freedom of assembly.**
- **All OGP members could advance related policies and practices in five areas:**
 - 1) notification and permits; 2) police force, detention, and surveillance; 3) criminalization and penalties; 4) digital and online activities; and 5) non-state actors.





One of the principal barriers to protecting and promoting the right to assembly is that the necessary people to enact change are often not involved in policy discussions. The principal recommendations in this report are derived from this premise. OGP members looking to promote freedom of assembly would greatly benefit from expanding the players involved.

- **Move beyond police.** Expand the definition of parties who protect and promote the right to freedom of assembly beyond state actors.
- **Act locally and globally.** Create commitments in a federated, multi-level approach. The US example of the Police Data Initiative provides an effective model. Police commissioners from over 30 major US cities voluntarily began publishing their data and coordinating to develop a national database.¹
- **Involve Ministries of Justice in OGP.** Especially include departments involved with police oversight, coordination, and setting standards.
- **Activate silent leaders.** Develop a means of creating active leadership from countries with advanced protocols and legal frameworks to begin peer-sharing. OGP local members in particular have a strong leadership role to play here.
- **Improve reporting on protocols and transparency.** Activists around the world can scale up and replicate the approach of ECNL to identify whether the legal and administrative framework exists to promote, respect, and protect the right to peaceful assembly.

“Prague, Czech Republic.” Photo by Bits and Splits, Adobe Stock



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The right to freedom of peaceful assembly is the fundamental right to collectively express, promote, pursue, and defend a common interest for whatever reason or motivation without fear of retribution. This right includes the right to participate in peaceful assemblies, meetings, protests, strikes, sit-ins, demonstrations, and other temporary gatherings for a specific purpose. Assemblies can be in public or private spaces; they may be online or offline; and they can be for a few hours, as well as a few months.²

The legal case for freedom of assembly

Freedom of assembly is an established global norm. It is enshrined in a number of international legal agreements and declarations. It is:

- Outlined in international agreements like the UN Universal Declaration on Human Rights (Article 20) and the International Covenant on Civil and Political Rights (Article 21),³ as well as regional conventions and standards.⁴
- Inter-connected to other rights, such as the freedom of association and expression, and the right to information and privacy, all endorsed in the *Open Government Declaration* signed by all OGP members.⁵
- Established as both a positive duty and a negative obligation—states must create the right frameworks in policy and practice that secure freedom of assembly and prevent and respond to violations but they must also refrain from restrictions of the right.⁶

The practical case for freedom of assembly

Beyond normative arguments, freedom of assembly is essential to the functioning of open government and for healthy societies. It shapes debate, public policies, and strengthens governance by:⁷

- Allowing diverse and different ideas to be expressed and heard, including the voices of minority or opposition groups.⁸ This is most critical for groups that have historically suffered discrimination, which might not have control of broadcast media, or may be disenfranchised;⁹
- Providing a critical channel for public dialogue about issues affecting a country—political, economic, social, and environmental;¹⁰
- Serving as a means to demand accountability: people asking questions and making demands of their leaders between elections, exercising this right through protest, and being informed by an open and free media;¹¹
- Catalyzing change: protests pushing governments to prioritize and speed-up their responses to reflect changes in social demands and perceptions;¹² and
- Making leaders responsive, which has been statistically shown to positively affect public health, education, economies, and income equality.¹³

Open government cannot work without assembly

Open government is rooted in the idea of more transparent, accountable and participatory governments.¹⁴ However, for participation to be meaningful and effective, it cannot be limited to elections or formal, “invited,” channels of engagement or exchanges with officials. Freedom of peaceful

assembly is also a critical form of political participation in a healthy civil society ecosystem:¹⁵

- Peaceful assembly through protests is an important feature in the modern history of many OGP members and has been essential for mass mobilization in the face of corruption and disenfranchisement.
- Peaceful assembly serves as a means for youth, migrants, or others who are unable to vote to make their voices heard.¹⁶
- Peaceful assembly is an extension of voting rights and political organizing. Moreover, people attending political gatherings also have extremely high rates of voting.¹⁷

Freedom of peaceful assembly is also tied to greater government openness and accountability—the other pillars of OGP.

- Assembly allows citizens to hold decision-makers accountable when the public has good, open information.¹⁸ For example, freedom of assembly is associated with reductions in corruption.¹⁹
- Assembly helps publicize open and accessible information (or lack thereof) and sparks public action through other channels (such as voting or litigation) on issues such as the environment, women’s rights, and public services.²⁰
- Public information is important to know how protests are handled. This can be knowing what police equipment is deployed,²¹ as well as legal restrictions to protesting.²²



Assembly in OGP: the need for greater commitment

The “why” of freedom of assembly is clear in the context of OGP. Nonetheless, independently produced data consistently shows that between a third and half of OGP countries have notable interference with the right to peaceful assembly.²³ At the same time, roughly a third to half of OGP countries perform consistently well. This suggests there is considerable room for leadership innovation and peer learning in this area.

To those important ends, this report looks at data on the current state of assembly in OGP countries from three sources: the CIVICUS monitor (combined with OGP’s Independent Reporting Mechanism findings); Freedom House’s Freedom in the World Report; and the World Justice Project’s Rule of Law Index.

CIVICUS monitor and Independent Reporting Mechanism

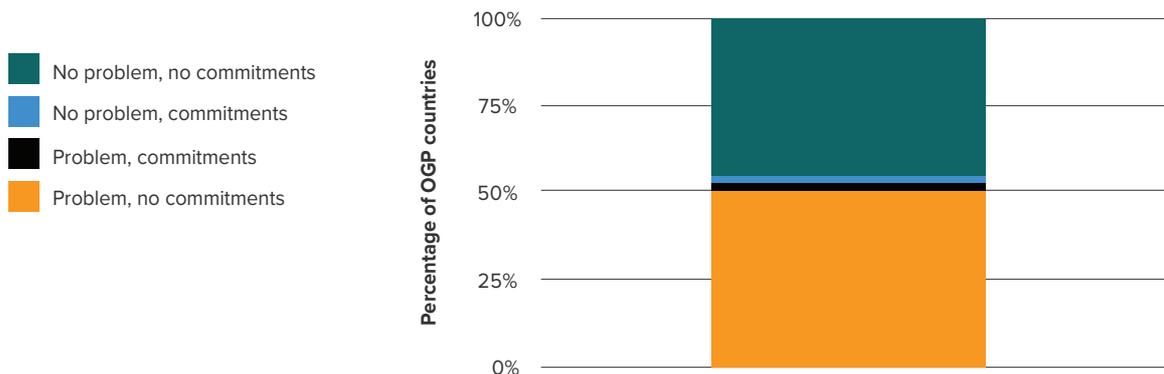
The CIVICUS monitor provides current news on fundamental freedoms in 65 OGP countries. According to CIVICUS, an international network of advocates for nonprofit space and civil liberties, three of the top

ten violations to civic space are related to peaceful assembly: excessive force during protests; the limitation, disruption and prevention of protests; and the detention of protesters.²⁴

Based on a 2018 analysis by the OGP Support Unit, more than half (33) of OGP countries have had some interference with freedom of assembly. The OGP Support Unit also coded OGP commitments that were relevant to peaceful assembly. Two OGP countries have made commitments related to “the right to assembly” in OGP national action plans: Montenegro²⁵ and Ukraine.²⁶ Of the 33 facing challenges, Ukraine is the only country to have used its action plan. Between 2012 and 2017, OGP’s Independent Reporting Mechanism (IRM) found only Ukraine had credibly implemented ambitious commitments on assembly.²⁷

Using IRM data and the data from CIVICUS, the disconnect between real world experience and OGP action plans is stark. Figure 1 shows that, despite problems with freedom of assembly, few countries have used their OGP action plans to address those issues.²⁸

FIGURE 1. Despite many notable issues with freedom of assembly, few OGP countries have undertaken commitments in this area



Source: OGP commitments database and CIVICUS Monitor Data coded by IRM staff.²⁹ (n=64)



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Freedom House

Freedom House assesses all OGP countries annually, scoring them 1–4. Consistent with the other evaluations, the countries were roughly split; just under half had the highest possible score and just over half had clear room for improvement. No current

member of OGP had the lowest score of zero, but fourteen did have a score of 1 or 2. This suggests that freedom of assembly is an acute issue in a number of OGP countries and an issue that needs urgent improvement in others. (See Figure 2.)

FIGURE 2. A number of OGP countries have concerning restrictions on freedom of assembly

Is there freedom of assembly? n=79



Source: Freedom House, Freedom in the World 2018, E1.



World Justice Project

The World Justice Project found similar mixed results regarding assembly freedoms, but provided greater detail.

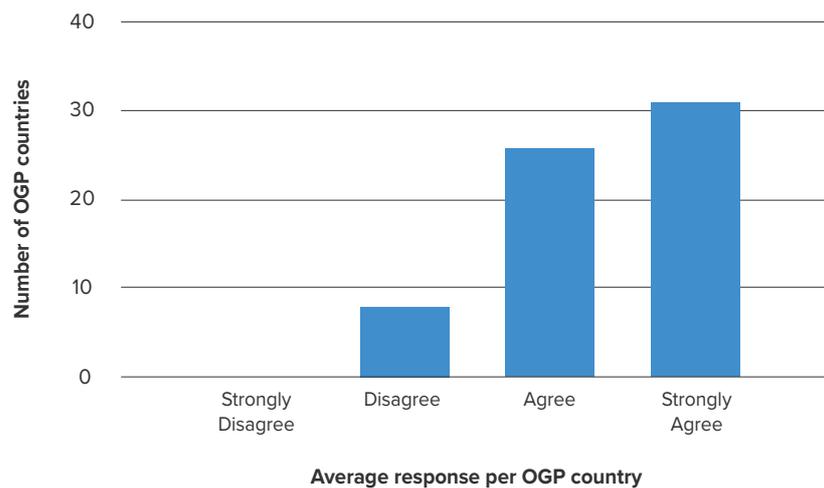
- **Absence of reprisal for demonstrations** (expert survey): Most legal experts surveyed in OGP countries agreed that people can hold non-violent demonstrations without fear of reprisal (see Figure 3).
- **Police violence** (expert survey): Concerningly, legal experts surveyed were slightly less optimistic about

the behavior of police. Respondents in one-third of OGP countries suggested that it was either “likely” or “very likely” that a protestor would be beaten by police (see Figure 4).

- **Community meetings** (public survey data): In slightly less than a third of OGP countries, citizens felt that they could not freely attend community meetings. (See Figure 5.)

FIGURE 3. In some OGP countries there is fear of reprisal for participation in non-violent demonstrations

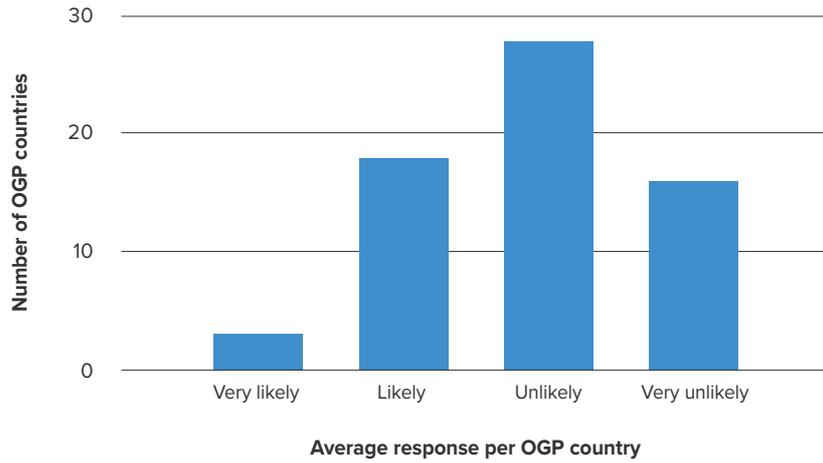
In practice, people in your country can freely hold public non-violent demonstrations without fear of reprisal. (n=65)



Source: World Justice Project, Rule of Law Index 2017-2018, QRQ 127.

FIGURE 4. In many OGP countries, there is a perception of excessive police response to non-violent demonstrations

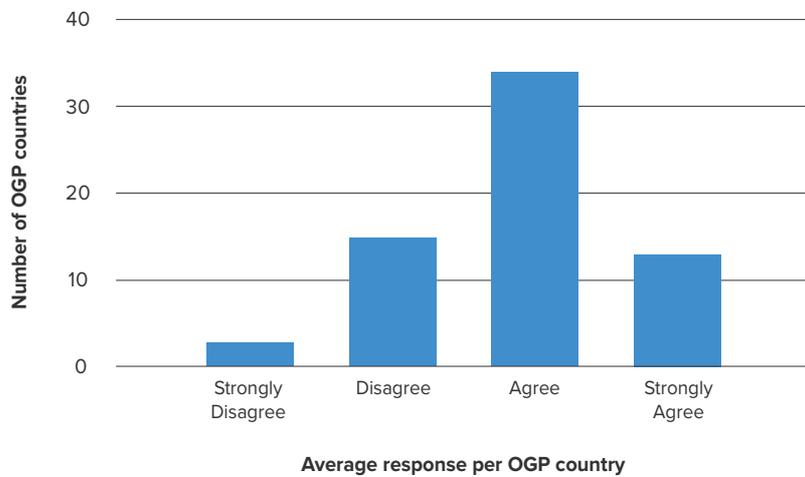
How likely is a citizen to be beaten by the police, without justification, for participating in a non-violent public demonstration? (Expert survey, n=65)



Source: World Justice Project, Rule of Law Index 2017-2018, QRQ 126

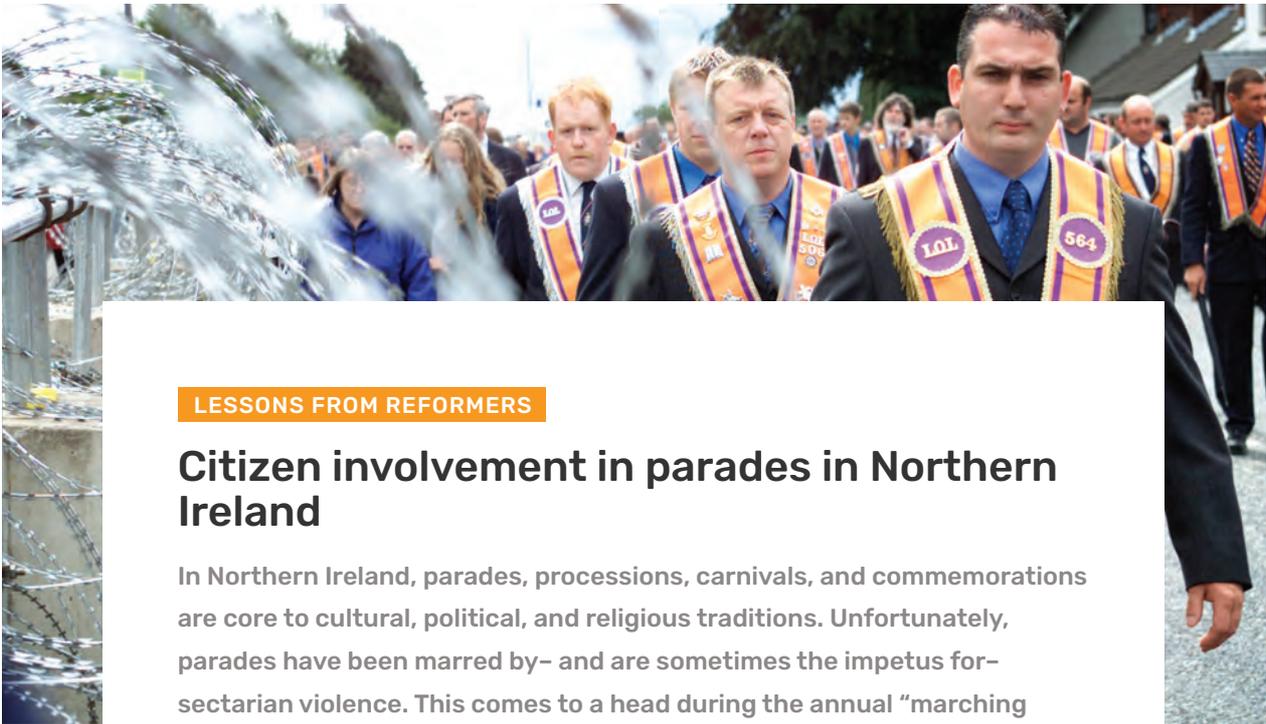
FIGURE 5. In most OGP countries, people feel that they can freely attend community meetings

In your country, people can freely attend community meetings. (General survey, n=65)



Source: World Justice Project, Rule of Law Index 2017-2018, GPP 42





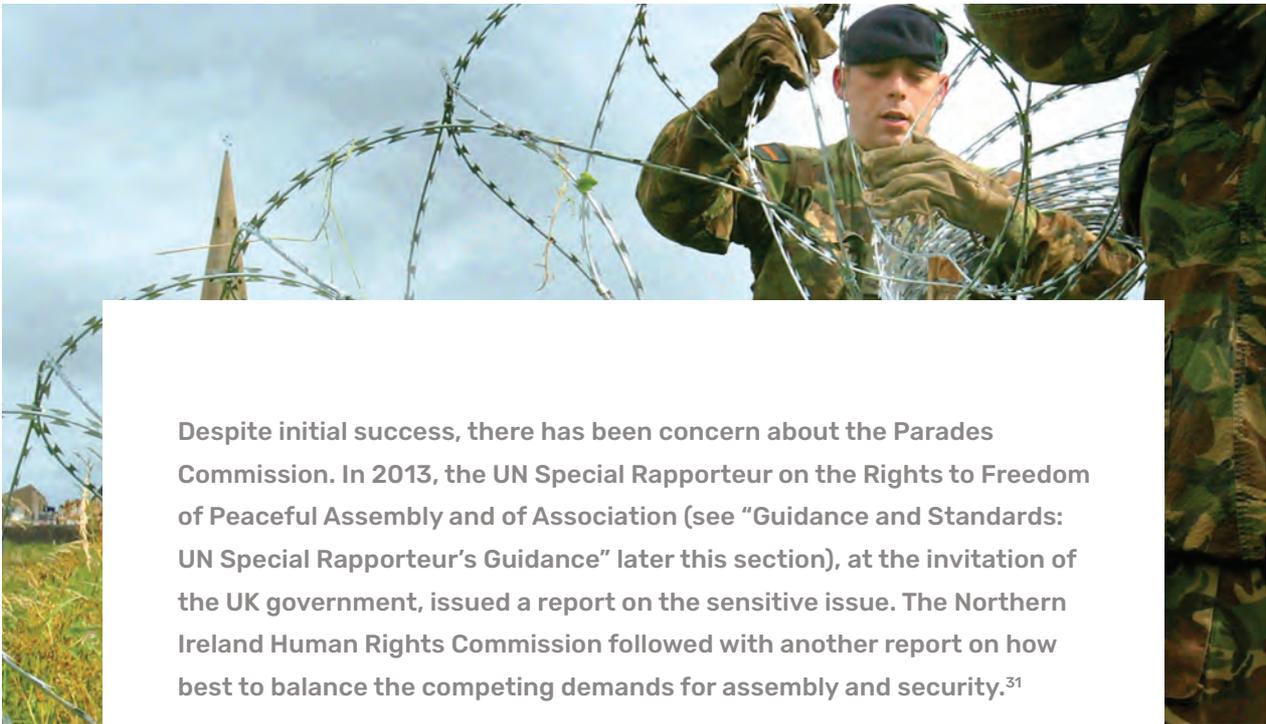
LESSONS FROM REFORMERS

Citizen involvement in parades in Northern Ireland

In Northern Ireland, parades, processions, carnivals, and commemorations are core to cultural, political, and religious traditions. Unfortunately, parades have been marred by—and are sometimes the impetus for—sectarian violence. This comes to a head during the annual “marching season” between March and August. Participants often carry flags and other emblems that their neighbors consider inflammatory.

In 1998, preceding the Good Friday accords, the Northern Ireland Parades Commission was established to approve permits for parades.³⁰ While it is not without critics, its establishment offers two positive lessons for countries struggling to balance public order and safety with freedom of assembly:

- *Removing the police from decision-making around parades.* The first major accomplishment of the Parades Commission was to move the permitting decision from the police department (previously the Royal Ulster Constabulary, now the Police Service of Northern Ireland). This allowed the police to focus on maintaining public order rather than judging the legitimacy of each parade.
- *Citizen voice in monitoring freedom of assembly.* The quasi-judicial body is made of citizens that compete for nominations by the Secretary of State of Northern Ireland.



Despite initial success, there has been concern about the Parades Commission. In 2013, the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association (see “Guidance and Standards: UN Special Rapporteur’s Guidance” later this section), at the invitation of the UK government, issued a report on the sensitive issue. The Northern Ireland Human Rights Commission followed with another report on how best to balance the competing demands for assembly and security.³¹

The two human rights bodies’ reports, followed by action by the Parades Commission, resulted in a framework called “Resolution by Dialogue.” It mapped the competing considerations of different human rights (e.g. freedom from violence and religious freedom) and invited participants and affected communities to suggest ways of improving the process. Interestingly, the resolution by dialogue was based on the participatory approach in the Framework Convention on National Minorities, which requires the state to foster dialogue and mutual understanding; specifically, governments must allow minority groups to voice their opinions. Governments must also provide dialogue in accordance with OSCE Guidelines on Assembly (see box at the end of this section), which emphasize voluntary dialogue as a necessary first step before escalation to legal means such as banning a particular parade.

While the guidance is in place, some of the most controversial civic groups do not recognize the legitimacy of the body. Nonetheless, Northern Ireland offers a promising approach to citizen dialogue in promoting and protecting the right of assembly within broader security concerns.

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Page 10: “Orangemen parade to Drumcree Church defying orders for a route change.” Photo by Reuters
Page 11: “Members of British Army prepare barricades around Drumcree Church.” Photo by Reuters





“Seoul: Balloon protest against corruption, 2006.” Photo by Austin King, Flickr

Improving the environment for peaceful assembly

This section lays out potential focus areas and next steps for OGP members seeking to increase freedom of assembly, both through their action plans and outside of them. There are a number of relevant issues to consider. Moreover, issues such as digital surveillance and data sharing have taken on a new relevance with evolving technology and political landscapes.

Unlike other policy areas in this report, the lack of OGP commitments on freedom of assembly makes a deeper analysis of effective measures in OGP countries more difficult. For that reason, we turn to a review of existing and emerging international standards that can help to illuminate a path forward for OGP countries.

At the international level, there are five principal sources of legal content outlining the freedom of assembly. These include international laws such as the Universal Declaration of Human Rights International Covenant on Civil and Political Rights and the European Convention of Human Rights (which applies to all 47 members of the Council of Europe). For EU members, the EU Charter of Fundamental Rights also applies. These are further elaborated in General Comments of the UN Human Rights Committee and Guidelines of the Organisation for Security and Cooperation in Europe (OSCE). (See the boxes on “Guidance and standards” later in this section for a brief discussion of developments in each of these arenas.)

Most importantly for OGP are the legal and administrative procedures that individual government entities enact to make freedom of assembly a reality on the ground. Guidelines for these areas are summarized in the box on the UN Special Rapporteur’s guidance (later in this section) based on the reports of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association. Readers are encouraged to familiarize themselves with these standards as they are ambitious relative to the current state of most OGP members. They provide inspiration for potential future areas of work. The practical difficulties of implementing even the most ambitious commitments are highlighted in three case studies: citizen dialogue in Northern Ireland on controversial parade routes (in the “Lessons from reformers” box, later in this section), freedom of assembly in East Africa in the “Lessons from reformers: Demonstrator’s early response - Uganda” box, and a legal survey of Eastern Partnership members in OGP carried out by the European Centre for Non-profit Law. (See “Lessons from reformers: Seven OGP Countries Addressing Assembly.”)

The remainder of this section addresses core problems identified in OGP countries through the review of the CIVICUS Monitor, relevant case law and examples from OGP countries outside of their OGP action plans, and potential commitments or actions that could be taken to address these concerns.

Notification and authorization

Problems:

- Use of notification and permission systems as a means to authorize or delay permits.
- Denial of permits without probable cause or due to issues such as conflicts with “time, place, or manner” of assembly³² or other vaguely defined exemptions to the right (“public morality,” “public order,” or “national security”).

Relevant cases:

- **Ukraine:** The first action plan (2012–2013) worked to develop a draft law, “On Procedure of Organising and Conducting Peaceful Events.” Various ministries—from Justice and the Interior, as well as the Cabinet of Ministers—were actively engaged in the process.³³
- **Panama:** Under the country’s constitution, organizers of a peaceful meeting or assembly are supposed to notify the mayor’s office 24 hours in advance of the event. This notification is not authorization under the law; the mayor is simply supposed to issue a statement that s/he has been notified.³⁴
- **Northern Ireland:** A civilian panel evaluates and makes binding decisions on route changes for controversial parades to ensure public safety (see the previous box).

Possible solutions:

- Prevent restrictions on peaceful assembly, including those of a political and/or public nature, including signature collections and “spontaneous assembly.”
- Notification processes should not be used as a form of authorization and should be ideally limited to those assemblies large in nature and/or posing a significant disruption.
- Enact regulation to ensure that no authorization is required to hold an assembly per internationally-agreed standards.³⁵
- Notification periods should not be excessively long and should only be used to facilitate the right to assembly.

Use of police force

Problems:

- Lack of oversight (such as through monitors), accountability, and information.
- Excessive and disproportionate use of weapons, equipment, and authority.
- Detention of protestors before arrival at demonstration, use of “kettling” techniques to encircle demonstrators.
- Use of “agent provocateurs” or plain clothes police to infiltrate assemblies.³⁶

Relevant cases:

- **Slovenia:** The Act on Public Assembly (2004) states that police and organizers must work cooperatively to determine the necessary police presence.³⁷ (Slovenia is not currently an OGP member.)
- **United States:** The District of Columbia’s First Amendment Rights and Police Standards Act (2004) states that police lines cannot be used at assemblies in an attempt to encircle individuals expressing their right to peaceful assembly.

Possible solutions:

- Establish open, clear, and ethical protocols addressing police conduct prior to, during, and following protests.
- Ensure that the cost for adequate security and safety for assemblies is covered by public authorities.
- Pre-plan with assembly organizers.
- Make transparent and easily accessible the guidance for use of force and equipment, and post-assembly reporting of police operations. This includes limiting the use of containment strategies to “exceptional” cases.³⁸
- Publish information on policing at protests following events.
- Train police officers in proportionate responses and requirements for the use of uniformed police at assemblies.
- Ensure adequate legal and practical protections for independent monitors to provide oversight of police and protester actions during assemblies.³⁹





LESSONS FROM REFORMERS

Demonstrator’s early response - Uganda

The Ugandan constitution guarantees citizens the freedom to assemble and demonstrate peacefully. However, laws such as the Public Order Management Act (POMA) give police wide-ranging power to regulate public meetings and prevent them from occurring. This provision has enabled the police to justify arresting and detaining opposition politicians and their supporters at political rallies.

In the face of these challenges, CSOs have stepped up to defend the freedom of assembly. In 2016, Solidarity Uganda—a nonprofit organization that builds capacity with community-based organizations—created a rapid response system to assist protesters facing state-sponsored violence and repression. Operated full-time, the system has an emergency hotline that protesters and others can call for emergency assistance. When activists are arrested, the hotline coordinator connects them with a pro bono lawyer who assists with bail and representation if they choose to sue the state. The organization also provides medical and psychosocial care.

Alongside Solidarity Uganda, Chapter Four Uganda is a network of lawyers and legal experts who conduct public interest and strategic litigation in cases where activists’ civil or human right have been violated. In addition to legal assistance, the organization also pressures authorities to regulate protests less violently.⁴⁰

Photo by Vladimir Wrangel, Adobe Stock

Criminalization and penalties

Problems:

- Excessive application of criminal charges for protesting or changes in liability regimes for damages during protests.
- Disproportionate civil and administrative charges, fines, or penalties for unpermitted assembly.
- Charges combined with other claims, such as public morality, terrorism, and national security violations.

Relevant cases:

- **South Africa:** In 2018, the South African Constitutional Court struck down a restrictive protest law that was being used by the government to criminalize public assembly—through fines and jail time—as unconstitutional.⁴¹
- **France and Bulgaria:** In 2018, the European Fundamental Rights Agency found that both countries had introduced counter-terrorism legislation which allowed for denial of public assemblies (France) and the potential closure of nonprofits (Bulgaria). The French Constitutional Court ruled that the use of emergency powers to stop labor and climate protests was overly broad and lacked sufficient safeguards.⁴²

Possible solutions:

- Decriminalize assembly activities, including clear regulations of this process.
- Apply criminal or administrative liability compliant with well-proscribed law (for example, not prosecuting organizers for actions made in “good faith” or for participants that were not involved in any violent actions). This would include the proportionate application and use of civil and administrative fines and penalties (for violations).⁴³
- Any detentions must meet legal “minimum standards,” ensuring that other vague policy frameworks—such as for public morality or national security—are not misused for prosecuting and limiting assembly.

Digital and online activities

Problems:

- Internet blackouts or service disruptions.
- Shutting down or monitoring of platforms being used to organize assembly.
- Online surveillance and privacy violations.
- Online gender-based violence and harassment of women’s public participation.

Relevant cases:

- **Estonia:** Estonians set out a positive framework regarding citizens’ online security, anonymity, privacy, and rights. Anyone can see which of their data is available or has been accessed by public authorities.⁴⁴
- **Italy:** As part of the country’s third OGP action plan, a specific commitment was adopted on promoting its Charter of Internet Rights, which was approved by its legislature in 2015. This included getting the public and officials to recognize the links between on and offline rights, including basic civil liberties such as assembly.⁴⁵

Possible solutions:

- Ensure cybersecurity measures and laws uphold human rights online (including freedom of assembly and the right to privacy).
- Guaranteeing unobstructed access to social platforms and the broader web at all times (i.e., for mobilizing, sharing, and creating content, etc.).
- Clarifying and making transparent grounds for online surveillance and attacks, including direct denial of service cyber-attacks.
- Using digital surveillance and facial recognition software during assemblies, and providing consistent, publicly accessible standards and processes for destroying, preserving (in relevant cases), accessing, or expunging that data.⁴⁶



- Clarifying the rights of individuals participating in online town halls and interacting with public officials acting in an official capacity, including on private platforms.⁴⁷
- Introducing measures and engaging all stakeholders to address gender-based violence against women online.

Non-state actors

Problems:

- OGP analysis of CIVICUS Monitor shows that non-state actors (counter-protestors and private security) are involved in a significant amount of violence during assemblies.⁴⁸
- Use of private security forces or parastate actors not subject to public oversight.⁴⁹
- Curtailment of assembly on publicly used but privately-owned spaces.

Relevant cases:

- **Netherlands:** A 2012 district court ruling in Amsterdam now allows public protests against business practices on business premises as long as they are proportionate.⁵⁰

Possible solutions:

- Provide for government oversight and industry standards to maximize safety and right to assemble.⁵¹
- Introduce measures to clarify the legitimate use and accountability of private and parastate security forces during protests and assemblies.⁵² Such measures would ensure that private security services do not perform policing functions during assemblies in lieu of democratically controlled police forces.⁵³
- Introduce rules to clarify and allow for the right of assembly on publicly-accessed private land (such as shopping malls).
- Enact rules to limit assembly organizers from “frivolous” civil lawsuits aimed at limiting the right to assembly.⁵⁴

Special Rapporteur's guidance on peaceful assembly

In 2010, the United Nations Human Rights Council established the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association. The current rapporteur is Clément Voule, a jurist and activist from Togo, preceded by Annalisa Ciampi and Maina Kiai, a lawyer from Kenya.

The Special Rapporteur: 1) gathers information on trends in assembly and of association and makes recommendations; 2) undertakes fact-finding missions to countries and issues urgent appeals regarding reported violations of the rights (see earlier box on Northern Ireland); 3) submits an annual report to the UN Human Rights Council and General Assembly; and 4) engages a range of stakeholders on receiving, responding and reporting on violations.⁵⁵

The rapporteur utilizes a set of guidelines and indicators to assess how a country is managing assemblies.⁵⁶ Importantly for OGP members, this guidance can serve as a means of assessing freedom of assembly in the country prior to developing ambitious commitments for an action plan. These assessment indicators include:

1. State duty to respect and ensure freedom of assembly:

States should respect and ensure all rights of persons participating in assemblies. This includes a positive presumption in favor of peaceful assembly.

2. The inalienable right to take part in peaceful assemblies:

- *Scope of assemblies:* The obligation to protect freedom of assembly extends to spontaneous assemblies, simultaneous assemblies, and counter-protests.
- *Notification:* States should have systems of notification, rather than authorization, only when necessary, legal, and proportionate. There should be a presumption in favor of assemblies with narrow limits to restrict assemblies, determined by an assessment of proportionality. Notification processes should be required in less than 48 hours, easily accessible to anyone, and not overly bureaucratic.
- *Risk assessment and mitigation:* When there is notification of multiple assemblies for the same place and time, the State conducts a thorough assessment of any risks and develops strategies for their mitigation.
- *Dialogue and non-discrimination:* The State employs a process for determining necessary restrictions through voluntary mutual agreement or, where not possible, processes that do not discriminate between the proposed assemblies.



3. Limited restrictions on the right to peaceful assembly:

- *Mandated body:* There is a legally established body with a clear mandate to deal with notifications of assembly, independent of undue interference, with clear guidance on exercising discretion in decision-making.
- *Fair process:* Proposed restrictions are put in writing, and justified and communicated to organizers in a timely manner. Formal appeals can be brought through administrative and judicial means without restriction. Any such rules must also allow for adequate flexibility to allow for spontaneous assembly.

4. Facilitation of the right to peaceful assembly:

- *Genuine engagement:* Law enforcement agencies liaise with organizers through an accessible point of contact skilled in conflict management and independent from other policing functions.
- *Travel and escorts:* Authorities do not require organizers to provide stewards. Intrusive anticipatory measures are not used in an assembly. Participants on their way to an assembly are not stopped, searched, or arrested unless there is a clear and present danger of imminent violence.

5. Use of force:

- *Capacity:* Law enforcement officials have the necessary equipment, training, and instructions to police assemblies without recourse to force, emphasizing de-escalation, communication, and engagement.

- *Equipment:* Non-lethal weapons and protective equipment should be used only in cases of real need and only where there is training, monitoring, and where options have been evaluated to comply with human rights standards to minimize indiscriminate harm. Automatic and autonomous weapons are not allowed.
- *Dispersal:* Comprehensive, public guidelines on the dispersal of assemblies follow international guidelines, provide practical guidance on which circumstances warrant dispersal, measures to be taken before dispersal (including de-escalation), and who may issue a dispersal order.
- *Monitoring:* There are established effective government systems for monitoring and publicly reporting the use of force, including when and with whom force is used. Effective controls prevent trade in monitoring data and crowd-control equipment, including surveillance technology, especially where there is a risk of unlawful killings, torture, or other abuses.

6. The right to observe, monitor, and record assemblies:

- *Communication:* Authorities proactively engage with monitors by communicating consistently before, during, and after an assembly.
- *Information distribution and access:* Authorities proactively provide access and information to members of the media and other monitors. Any interference with the recording of an assembly, including the seizure or damage of any equipment, is prohibited without a warrant.

7. Privacy and collection of personal information:

- *Privacy:* The State notifies demonstrators of any filming. Where biometric technologies, including facial recognition software, are used, appropriate protections of public privacy, personal data protection and safety have been implemented.
- *Data destruction and preservation:* There is a clear process for data retention and destruction, except: where it depicts use of force, detention, arrest, or dispersal; where it relates to the subject of a complaint; or where law enforcement, oversight authorities or the subject of data have reasonable suspicion of crime or misconduct. The public knows whether data has been stored and has a complaints process regarding retention and expungement of the data.
- *Undercover officers:* Democratic bodies determine and review necessity and proportionality tests. Police agencies have internal review systems and external, independent oversight. Judges must authorize any undercover police.

8. Access to information on police protocols and training:

- *Proactive dissemination:* This includes relevant: (a) laws and regulations; (b) standard operating procedures and policies for policing and management; (c) types of equipment; (d) training of law enforcement officers; and (e) how to access accountability processes.
- *Right to information:* Existence of a right to information mechanism assuming maximum disclosure and allowing for appeals.

9. Responsibilities of business enterprises:

- *Publicly accessed private space:* Where privately owned spaces are open to the general public and serve a similar function as public spaces, they are treated as a public space for the purposes of the rights to freedom of assembly and expression.
- *Protection from legal retaliation:* There are legal protections for assembly organizers and participants from civil lawsuits brought frivolously, or with the purpose of deterring public participation.

10. State accountability:

- *Liability and review:* Police have liability for official misconduct. There is adequately resourced non-judicial oversight, including internal investigations and a statutory independent police oversight body. Suspected crimes are quickly referred to a prosecutor, and officers under investigation would not be redeployed until conclusion of the investigation.
- *Independent oversight body:* Purview includes investigating complaints from the public; accepting referrals from police; and initiating investigations in the public interest, including use of force.



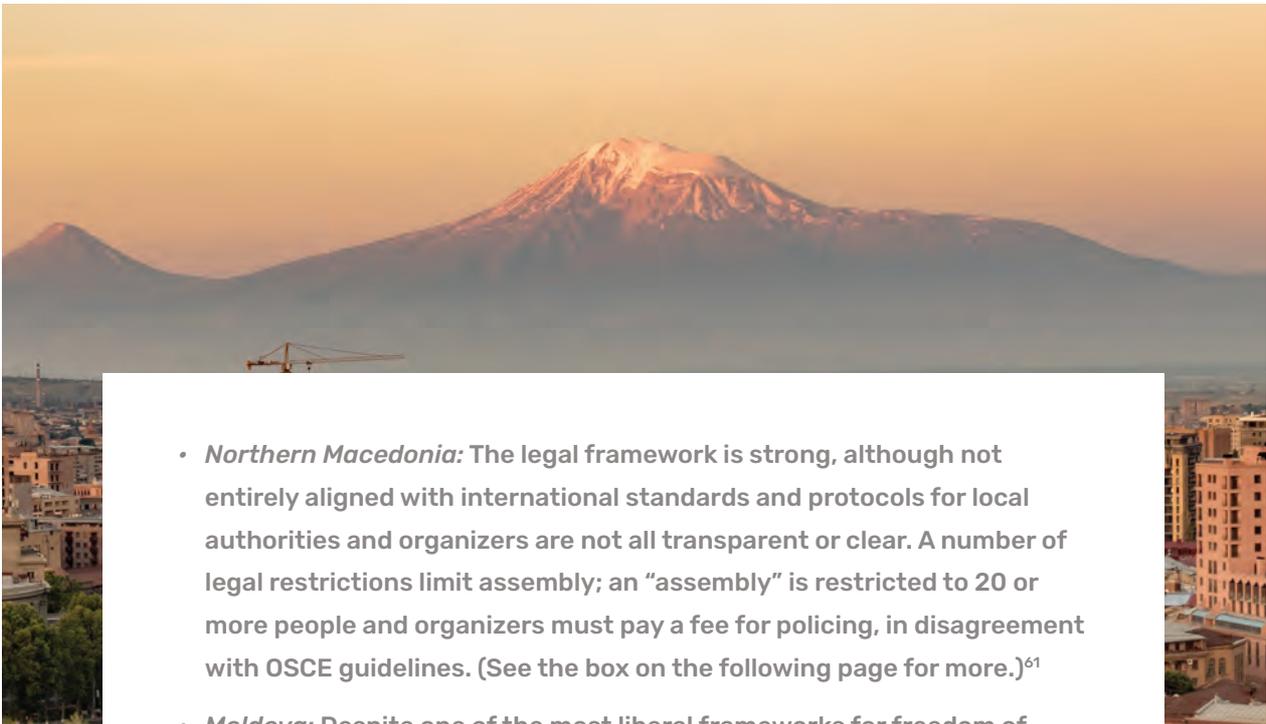


LESSONS FROM REFORMERS

Seven OGP countries addressing assembly

The European Center for Not-for-profit Law (ECNL), in an innovative project on freedom of assembly, assessed seven OGP countries in Central and Eastern Europe for relevant law and practices between 2017 and 2019. (There were also two non-OGP countries included in the assessment.) Many of these OGP countries have strong legal frameworks, but face implementation challenges around policing of events and lack standardized processes among authorities, especially at the local level.

- *Albania:* The country's legal framework protects assembly. Still, in practice, Albania has room for improvement. It is unclear whether organizers need notification or authorization to demonstrate. De facto, this restricts spontaneous assemblies and creates a lack of coordination with police.⁵⁷ Organizers have been fined for lacking authorization. A more standardized, unified, and transparent process for authorization could resolve some of these issues.
- *Armenia:* Since passage of the 2011 Law on Freedom of Assembly, implementation has gradually improved. Prior to the 2018 Velvet Revolution, there had been a marked decrease in violence during the 2016 election as compared to years prior.⁵⁸ Nonetheless, there was significant discretion in the use of force, especially during opposition rallies, with well-documented unlawful, and excessive violence against assembly participants including flash grenades and undercover police officers. There was aggressive prosecution and prolonged detention of assembly participants.⁵⁹
- *Croatia:* Croatia's law and practice are well-harmonized with international standards. Standardization could limit local authorities' discretion and discrimination and create an independent body to decide bans and restrictions.⁶⁰



- **Northern Macedonia:** The legal framework is strong, although not entirely aligned with international standards and protocols for local authorities and organizers are not all transparent or clear. A number of legal restrictions limit assembly; an “assembly” is restricted to 20 or more people and organizers must pay a fee for policing, in disagreement with OSCE guidelines. (See the box on the following page for more.)⁶¹
- **Moldova:** Despite one of the most liberal frameworks for freedom of assembly in the region, Moldova faces implementation challenges around competing claims for public space, particularly at lower levels of government. Some municipalities and smaller towns close public spaces for official ceremonies. A number of organizations have sent notification years in advance—including, in one case, 80 years—de facto blocking others from being able to assemble at the same time and place. In addition, opposition assembly organizers perceive a difference in treatment from pro-government assemblies. As with other countries in the survey, procedures and protocols regarding the use of force, equipment, and officers remain opaque.⁶²
- **Serbia:** Despite the recent Law on Public Assembly (2016), Serbia has lost ground on the freedom of assembly. In practice, spontaneous assemblies, legal even without any organizer, face restrictions, especially if groups are politically sensitive. Policing and arguably excessive sanctions have restricted assemblies.⁶³
- **Ukraine:** Despite unequivocal progress, Ukraine still lacks a specific law on freedom of assembly. Draft legislation proposes extending military control over peaceful gatherings, despite constitutional protections. Local authorities restrict freedom of assembly through cumbersome processes of notification and authorization. Police lack clear guidelines and training for dealing with public assemblies, including preemptive detentions and unclear identification of officers.⁶⁴ (As mentioned earlier in this section, Ukraine made an early OGP commitment on the fundamental right to assembly.)

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Emerging standards on assembly



"Seoul: Hundreds of thousands of people gather to demand the ouster of President Park Geun-hye, 2016."
Photo by Getty Images

OSCE Guidance on Freedom of Assembly

Starting in 2007, the regional Organization for Security and Co-operation in Europe (OSCE) produced guidelines to assist members in aligning their legislation with agreed European and international standards on freedom of assembly.⁶⁵ The standards are part of a broader program of support, which includes LegislatiOnline.org, a database that collects good examples of national legislation on freedom of assembly. This effort aims to provide countries with different models to regulate the right to free assembly.

The guidelines draw on international and regional treaties to establish minimum protections of the right to assembly. The guidelines address:

- Legitimate grounds for restrictions,
- Procedural issues (including spontaneous assemblies and counter-demonstrations),
- Independent monitoring of assemblies, and
- Use of force and monitors for independent oversight of assembly.

For example, the guidelines state that no permission should be needed to assemble and that laws should presume peaceful assembly. While most countries have a constitutional guarantee of freedom of assembly, most existing legislation may not make such assumptions explicit. Armenia, for example, has this right in its constitution, but passed an enacting law in 2008 guaranteeing no unreasonable restriction to the exercise of assembly.⁶⁶

Finally, the guidelines underscore the importance of working with different stakeholders in the drafting and implementation of related laws. The guidelines are currently under revision and will receive a third update in 2019.

General Comment on Article 21 of the International Covenant on Civil and Political Rights

The United Nations High Commission for Human Rights (OHCHR) is preparing a general comment on the right of freedom of assembly during the writing and publication of this report. General comments are non-legally binding, but authoritative interpretations of existing international law. The goal of the comment is to give legal guidance for states in how to implement the abstract right laid out in the Covenant. This can assist OGP members wishing to implement assembly commitments.

International Finance Corporation (IFC) Good Practice Handbook

The IFC is the World Bank's private sector promotional arm. It has developed standards for the use of private security forces under

the organization's "Performance Standard 4," which requires private companies to consider security risks both to and from communities. This is especially important in emerging markets where major infrastructure investments often conflict with local needs. The standard provides good practices for security-community relations, community engagement, women's voices, proportional response, and compliance with human rights protocols, including assembly. This includes establishing robust preventative measures and formal grievance mechanisms.⁶⁷

Interstate Natural Gas Association of America (INGAA)

Less ambitious in its overall scope than other standards, but unique as it comes from an industry association, INGAA's "Guidelines for Contractors to Prepare for Onsite Protests" outlines processes for risk-management and de-escalation with communities on large-scale infrastructure projects.⁶⁸ The guidelines primarily focus on managing fallout from protests and do not explicitly deal with individual or community rights to publicly voice concern about major projects.



Endnotes

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