

Civic Space

Defending Activists and Journalists

**Open Government
Partnership
Global Report**

DEMOCRACY BEYOND THE BALLOT BOX

Open
Government
Partnership



Key points


Without activists and journalists, open government is severely weakened. They serve as critical intermediaries, connecting public institutions and decision-makers with everyday citizens. They inform and raise awareness of issues—as well as demand accountability when it is needed. Protecting this essential watchdog role also protects the people who use open government every day to create change.

Freedoms required by activists and journalists continue to face threats around the world. This section explores specific challenges within OGP countries and possible solutions. Key findings include:

- **Activists are diverse.** They come from all ages, genders and backgrounds, and have different needs, particularly when it comes to women, LGBT+, and marginalized groups. They are often communities of people, not just individuals or professional organizations.
- **In four out of five OGP countries,** journalists report harassment, often from non-state actors.
- **In a small but notable minority of OGP countries,** activists face harassment, stigmatization, detention, and violence.
- **In 50 OGP countries, there is inadequate investigation** and prosecution of threats against activists and journalists.
- **OGP members can use their action plans to help activists and journalists by limiting harmful practices,** establishing accountability against officials, strengthening investigative and prosecutorial bodies that can redress harms, and proactively communicating the important role journalists play in society.

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Time and again, OGP members have publicly committed to protect expression. All OGP members sign the Open Government Declaration upon joining, committing to create government “that empowers and delivers for citizens” that is “consistent with our commitment to freedom of expression, association, and opinion.”¹

The Paris Declaration, adopted by the OGP Steering Committee on behalf of the membership in 2016, commits to:

protect, consistent with international law, freedom of expression, including for the press and all media, defend the role of journalism as a crucial force for transparency and accountability, and stand up against attacks and detention of journalists.

Moreover, the OGP theory of change upholds civil society engagement as one of the four forces needed for open government reform.

Beyond statements of aspiration, activists and journalists are at the heart of making open government work:

- **They defend the mission and vision of the partnership.** This includes everyone from environmental and human rights defenders—including women’s and youth rights activists—to academics, journalists, and bloggers.
- **They query, vet, and use open and publicly available information.** This helps to promote positive changes in government, build trust, and support political processes. One survey in the US found that 80% of adults believe that news media are “critical or very important” for the country’s democratic system.²

- **They help ensure checks and balances on powerful interests.** In the Philippines, a data-driven approach to governance encouraged local governments (“Barangay”) to use open data to let community members monitor local government budgets and engage in planning.³
- **Their work helps to ensure healthy, inclusive growth.** Recent findings looking at over 200 countries show that where civic freedoms are respected in a country, they correlate with good economic and human development outcomes.⁴

Inversely, when civil society actors are harassed online or in person (either for their activities, gender, sexuality, religion, or ethnicity, etc.), people will be intimidated and fearful to speak out and engage with government. Intimidation includes sexualized violence online, harassment, disclosures of home addresses and workplaces, and threats against civil society actors and family members. This will ultimately erode the free flow of information and collaboration. This often disproportionately impacts women, minorities, and minority viewpoints.

Beyond OGP public declarations, the obligation to protect activists and journalists is enshrined in international and domestic law.

- Article 19 of the *International Covenant on Civil and Political Rights* obligates states to respect, protect, and promote expression and the right to seek information, including enacting domestic legislation.
- According to the Declaration on Human Rights Defenders (1998), these defenders contribute to “the effective elimination of all violations of human rights and [to] fundamental freedoms of peoples and individuals.”⁵
- The UN Human Rights Commission Resolution 33/2 declares states have the obligation to prevent, protect, and prosecute attacks against journalists.⁶

More recently, the UN Human Rights Council appointed a Special Rapporteur on the Situation of

Human Rights Defenders and a Special Rapporteur on Freedom of Expression.⁷ Similar rapporteurs exist for regional bodies in Africa, Europe, and Latin America. These rapporteurs document abuses, raise awareness of human rights, and build political will for domestic reforms at the national level. The UN specifically set a global target to “ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements,” in Sustainable Development Goal 16.10.

An important note on terminology: this report uses “activists,” but there is increasing international consensus around the term “human rights defenders.” The United Nations General Assembly recognizes “human rights defenders” to include journalists, environmentalists, whistle-blowers, trade unionists, lawyers, teachers, housing campaigners, and others.⁸ In this report, “activist” and “defender” are used interchangeably. This is intentional as this report is primarily aimed at a domestic audience who may not be familiar with the resolutions and terminology of the United Nations and other international organizations. Activists include individuals, organizations, or communities, formal or informal, who engage in civic life. The usage of “activists and journalists” is not intended to undermine or be a substitute for the important legal work done by other organizations.

Additionally, this “Defending Activists and Journalists” section combines findings on freedom of expression with findings on basic human rights institutions. This intends to avoid a conflation of the two elements. The data illustrates that institutions that protect and promote free expression are ineffective, or, where effective in investigating and making recommendations, are unheeded. Again, this is not consistent with international human rights law, but the combination of freedom of expression and human rights institutions aims to make this report useful to domestic reformers.



Threats to activists and journalists

Attacks against activists and journalists are one of the leading threats to open governments and civil society around the world.⁹ Data on both the extent and reach of these dangers is concerning.

- For human rights defenders, Latin America is the most dangerous region, accounting for 85% of the recorded killings of activists in 2017.¹⁰
- For journalists, Afghanistan, India, Mexico, and the US account for the most killings based on figures from Reporters without Borders.¹¹
- Beside governments, non-state actors like organized crime, armed groups, and private (international) companies have targeted activists and journalists that challenge their operations, leading some to claim that harassment and killing have reached a peak unseen for at least a decade.¹²

Threats to activists and journalists are not limited to physical violence. They also include:

Harassment

- *Asset seizure* has been applied to groups and individuals from Azerbaijan to Zambia and the European Union to Turkey; it often has been

against groups working on sensitive topics like anti-corruption, land rights, political opposition activities, human rights, and LGBT+ issues.

- *Travel bans* have been used against leading civil society actors and their families in Azerbaijan, Bahrain, Egypt, and Turkey, among others.
- *Harassment by private actors* can involve death threats and vandalization. In a recent report, the Fundamental Rights Agency asked a variety of CSOs about threats and/or attacks to their staff in the last three years. It found that, “Most CSOs reported mainly verbal and online threats and attacks or being targeted by negative media campaigns and digital security threats. However, as many as 15 organizations [out of 136 respondents] said that their staff or volunteers had been physically attacked for reasons linked to their work. Furthermore, 20 organizations reported damage to their premises (such as vandalism, graffiti and broken windows). At the same time, only a quarter of the organizations that experienced such incidents reported them to the authorities.”¹³

Stigmatization

- *Labeling and vilification.* In Russia, CSOs must register under the *Foreign Agents Law* if they receive any non-domestic funding.¹⁴ Hungary passed similar legislation in 2017.¹⁵ (See the “Freedom of Association” section of the OGP Global Report for more information.)
- *Intimidation.* In the United States, President Trump has regularly assailed the press as an “enemy of the people.” According to the 2019 Freedom House report, “Trump has assailed essential institutions and traditions including the separation of powers, a free press, an independent judiciary, the impartial delivery of justice, safeguards against corruption, and most disturbingly, the legitimacy of elections.”¹⁶

Detention

- Using a state of emergency that was declared in 2016, the Turkish government has since detained at least 50,000 people pending trial, with at least 112 journalists sentenced in 2018 alone.¹⁷
- Police in a number of West African countries, including a few OGP countries, have increasingly detained journalists, including without formal charges.¹⁸

Defamation and legal intimidation

- *SLAPPs* (Strategic Lawsuits against Public Participation) are drawn-out, expensive lawsuits used to silence and harass journalist activists. (See “Good to know: The rise of SLAPPs to silence speech” later in this section for more.)
- *Chilling speech and press.* Use of overly-discretionary slander, defamation,¹⁹ libel, and blasphemy laws.

Criminalization

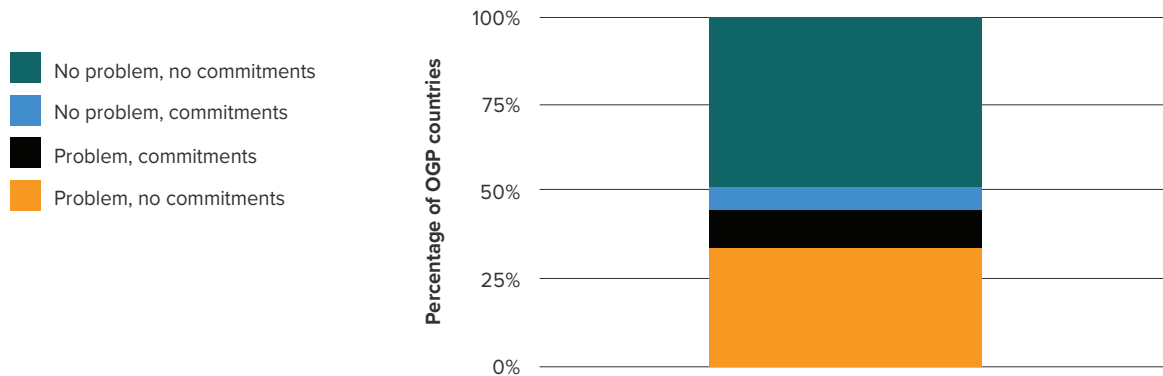
- *Use of law to restrict association.* In 2018, an outspoken anti-government Filipino news site, the Rappler, was charged with evading taxes.²⁰ Similar charges have been levied against human rights organizations in Kenya.²¹
- *Criminalizing protest.* Ten US states²² have passed laws lessening penalties for injuring demonstrators who block public roads.
- *Criminalizing legal services.* In Europe, there is significant criminalization of providing basic services (including information and legal services) to refugees and migrants.²³

Violence

- *Killings.* Despite the peace accords related to ongoing conflict in the area, the Colombian Ombudsman’s Office shows that 282 community activists and journalists were murdered between January 2016 and February 2018. Additionally, two journalists were killed in Malta and Slovakia in 2017 and 2018 respectively.

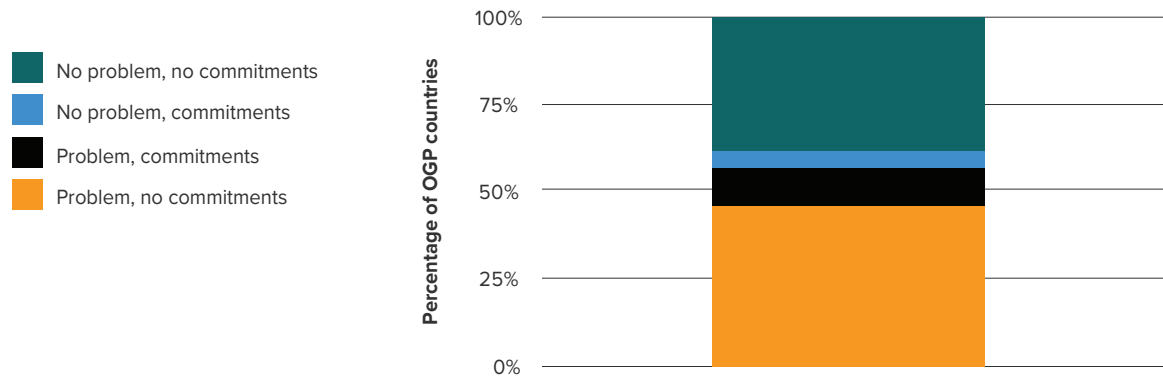
Based on a 2018 OGP analysis of 64 OGP countries, a significant group of OGP governments face challenges with the functioning of human rights institutions (37 countries) and freedom of expression (29 countries). Of these countries, most have not used their OGP action plans to undertake reforms to prevent, investigate, and sanction harassment of activists (see Figures 1 and 2). Figure 1 looks at commitments that deal specifically with freedom of expression or the media. Figure 2 looks at the number of countries with commitments to improve human rights protection institutions. (For reasons of precision, these commitments are only coded as relevant to human rights protection if they use the term “human rights” or its equivalent.)

FIGURE 1. A small number of OGP countries with problems in freedom of expression have undertaken commitments



Source: OGP commitments database and CIVICUS Monitor Data coded by IRM staff.²⁴ (n=64)

FIGURE 2. Most OGP countries have problems with human rights investigation and follow-up, but few have used their action plans to address the problem



Source: OGP commitments database and CIVICUS Monitor Data coded by IRM staff.²⁵ (n=64)

OGP major accomplishments to date

Despite the gloomy global picture, some OGP action plans have undertaken steps to defend journalists and activists from different threats and actions coming from governments, companies, and other non-state actors.

- Eleven countries have commitments to strengthen human rights institutions, monitor and comply with recommendations from international human rights conventions, and protect activists, journalists, and human rights defenders from harassment. Seven of these countries have “ambitious” commitments, as assessed by the IRM.²⁶
- However, two-thirds of countries with noteworthy problems do not have commitments addressing these issues in their action plans. This accounts for 30 percent of OGP countries.²⁷

The countries that have made commitments tend to focus on prevention, protection, and sanctions.

Prevention:

- Colombia committed in its second action plan (2015–2017) to create a national archive to document and provide information about past victims of its armed conflict. (See the “Colombia: Opening up information on past abuses” box later in this section.)²⁸
- Norway focused on advancing freedom of information through its foreign and development policy work to promote free expression and counter rising attacks against civil society by state and non-state actors in other countries.²⁹
- Uruguay, in its third action plan, is moving toward an open data approach to look at access to information, including human rights violations under the military dictatorship.³⁰

Protections:

- Croatia committed in its second action plan (2014–2016) to strengthen protection mechanisms for journalists who speak out against censorship.³¹
- Ireland committed in its national action plan (2014–2016) to build a culture of whistleblowing and adopt

national legislation to protect people speaking up. (See the box on the next page.)³²

- Italy focused on implementing its “Declaration of Digital Rights,” which was approved in 2015, as part of its third action plan (2016–2018).³³
- In 2016, Mongolia committed to adopt a new media freedom law based on international standards, which would include protecting journalistic confidentiality. In addition, the government committed to amend the National Broadcasting Law to protect the media from political influence and promote its independence.³⁴

Sanctions:

- Jordan adopted a commitment to track data on human rights related complaints in its action plan (2016–2018). An electronic database was set up to file and track complaints to ensure accountability in the process and escalation of legal cases.³⁵
- Mexico made a commitment in its action plan (2014–2016) to begin a process to address the forced disappearance of people. (See “Mexico: Attempting to address violence against activists and journalists” later in this section.)³⁶
- Montenegro put forward a commitment for the government to resolve crimes against journalists, including the establishment of a task force to look into past and unsolved murders, as its neighbor Serbia had done. (See “Serbia: Ending impunity in the killing of journalists” later in the section.)³⁷

Beyond commitments, the Partnership has taken an active role in addressing problems among members through the OGP Response Policy:³⁸

- The Response Policy was initiated against Hungary after four CSOs submitted a Letter of Concern in July 2015. When the OGP Steering Committee found the claims were valid and relevant, the government of Hungary withdrew from OGP in December 2016.³⁹
- In May 2016, Azerbaijan became the first OGP country to be designated as inactive under the OGP Response Policy.⁴⁰

- In 2018, CSOs involved in OGP brought a Response Policy case regarding spying in Mexico. The case is still open, pending a review of the concern and possible government remedies.⁴¹ (See the “Mexico: Attempting to address violence against activists and journalists” box later in this section for further explanation.)
- In 2016, a case regarding freedom of movement in Israel was raised, but was dismissed as the party bringing the claim lacked standing.⁴²
- A letter of concern was filed against Turkey. The filing party lacked standing because Turkey had not had a working OGP structure for several years. Consequently, in September 2016, Turkey was designated inactive by the OGP Steering Committee after failing to provide a national action plan developed with partners for two consecutive cycles.⁴³
- A final letter filed concerning the government of Australia was found to be without factual merit.⁴⁴



LESSONS FROM REFORMERS

Ireland: Shifting protections and culture about whistleblowers

Whistleblowers serve a critical social function by flagging neglect or abuses in the public and private sector. Having the right to speak out about alleged abuses—such as corruption or harassment—is essential for a safe environment and culture for everyone. However, these individuals need adequate protections and social acceptance to be able to fulfill this role.⁴⁵

Ireland used its national action plan (2014–2016) to begin to encourage, protect, and raise awareness about whistleblower duties and protections (as outlined under Ireland’s Protected Disclosures legislation).⁴⁶ The law was passed in 2014 during the first year of the action plan and was developed in close cooperation with civil society. It has been considered among the most comprehensive whistleblowing laws in the European Union as it covers the reporting of abuses in all sectors of society.

Ireland’s inclusion of whistleblowing in its action plan was considered transformative and a starred commitment. An independent assessment of the plan classified it as being completed within two years and having an “outstanding” effect on opening up government.⁴⁷ The government, through the Department of Public Expenditure and Reform (DPER), worked with trade unions, CSOs and associations representing employers to carry out the commitment and pass legislation. The timing was optimal; a bill for whistleblowing legislation was just being discussed as the action plan was being developed.

Photo by Ronstik, Adobe Stock

The data shows the need for change

In spite of laudable advances within the context of action plans, data from V-Dem, World Justice Project, and Freedom House show that many OGP countries continue to experience severe challenges, especially journalist harassment and follow up by institutions investigating human rights violations. This section looks at these challenges across three categories: free press, free expression, and human rights institutions.

Free press

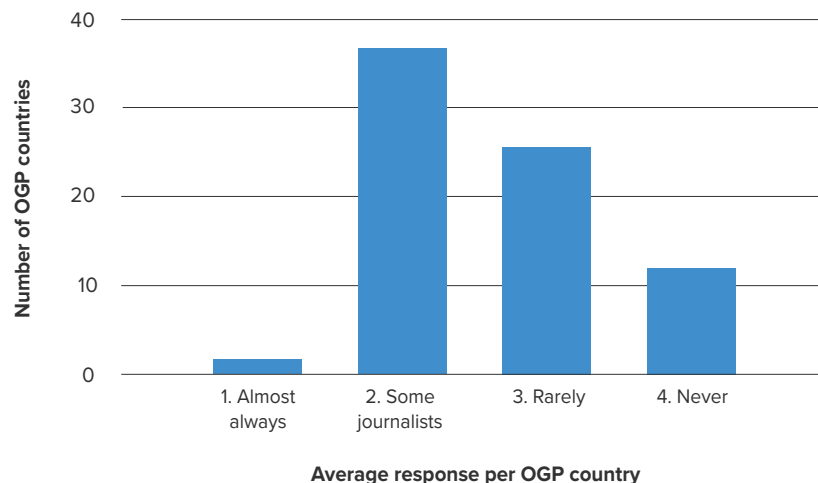
Many OGP countries have problems upholding free press; powerful actors directly harass the press and, in some cases, the media self-censors its work. Figures 3 and 4 analyze data from two

sources (V-Dem and Freedom House), and show that journalists face threats worldwide, some severe, even in OGP member countries.

- The majority of OGP countries have journalists who are harassed (by government or other actors). This is true in roughly four out of every five OGP countries, according to V-Dem data.
- People surveyed in 48 OGP countries feel that journalists face threats, punishment, or imprisonment for their work according to the World Justice Project.
- Over two-thirds of OGP countries face severe to moderate constraints to a free and independent media, according to Freedom House.

FIGURE 3. In many OGP countries journalists face severe harassment

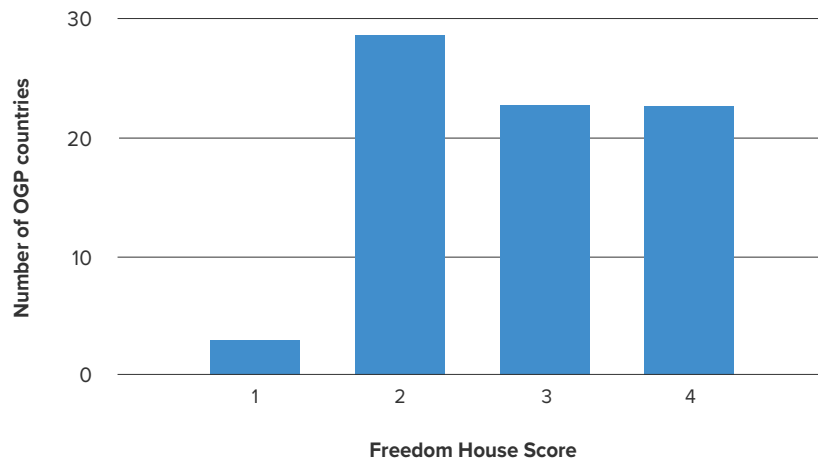
Are individual journalists harassed—i.e., threatened with libel, arrested, imprisoned, beaten, or killed—by governmental or powerful non-governmental actors while engaged in legitimate journalistic activities? (n=78)



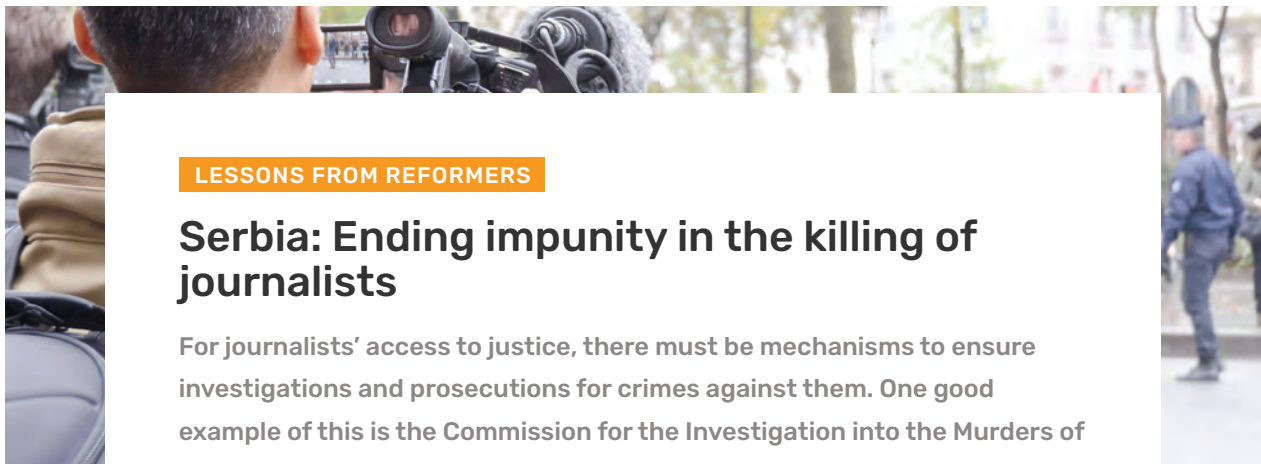
Source: V-Dem v2meharjrn (3.11.8), Version 8 (April 2018).

FIGURE 4. Some OGP countries have weaker environment for independent media

Are there free and independent media? (n=79)



Source: Freedom House, Freedom in the World 2018, D1.



LESSONS FROM REFORMERS

Serbia: Ending impunity in the killing of journalists

For journalists' access to justice, there must be mechanisms to ensure investigations and prosecutions for crimes against them. One good example of this is the Commission for the Investigation into the Murders of Journalists, which Serbia established to re-examine old cases that ended in impunity.⁴⁸

The commission was established in 2012 in response to violence against journalists following the breakup of former Yugoslavia in 1992. Over 40 journalists disappeared or were killed in the country since that time, with very few of the cases being concluded.

The Commission has several working groups, all led by the Ministry of Interior, and its work is highly transparent. In addition to the ministry, the Commission includes representatives of professional journalists and representatives of the Security Information Agency (BIA), Serbia's national security body.⁴⁹ Three cases have been brought to justice. A public awareness campaign,⁵⁰ which won an award at the 2014 Cannes Lions International Festival of Creativity, was also launched to engage the public about the Commission's work.⁵¹

While Serbia continues to have challenges with press freedom, the Commission is considered an example whose model is exportable. Neighboring country, Montenegro, has since set up a similar body.

Photo by Scorcom, Adobe Stock



LESSONS FROM REFORMERS

Mexico: Attempting to address violence against activists and journalists

The Mexican justice system suffers from lack of judicial independence and is part of a broader environment of impunity.⁵² Their second OGP action plan states that only between 1 and 2 percent of committed crimes resulted in sentencing and many individuals (96 percent) do not report crimes at all due to fear, corruption, and/or the lack of faith in Mexico's institutions to respond. With disappearances being a severe problem in the country, this lack of criminal justice means that many cases are going unreported and not investigated. In 2014, this came to an acute head with the forced disappearance, and likely killing of 43 student teachers while travelling to a demonstration in Iguala, Guerrero.

Mexico's 2016 action plan committed to analysis of the patterns of disappearances, a mechanism to track them, and publication of open data about the cases. This would build upon a prior action plan (2013–2015), where Mexico made related commitments to gather and publish data about disappearances and provide information on people that have been detained. Those two commitments were fully completed.⁵³

Unfortunately, these efforts lost momentum when it was discovered that the government had used spyware to harass activists, including civil society members of the "Tripartite Commission" responsible for governing OGP. The government is currently under review by the OGP Support Unit following an OGP Response Policy letter from Mexican organizations.

At the time of writing, the newly appointed Mexican administration has affirmed its commitment to work with civil society to address these concerns. A report outlining the findings of the merits of the original concerns is to be completed by the first quarter of 2019. Based on these findings, and the responses provided by the government, an update and report will be prepared and presented to the OGP Steering Committee at its next meeting in May 2019.

Photo by Edgard Garrido, Reuters

Free expression

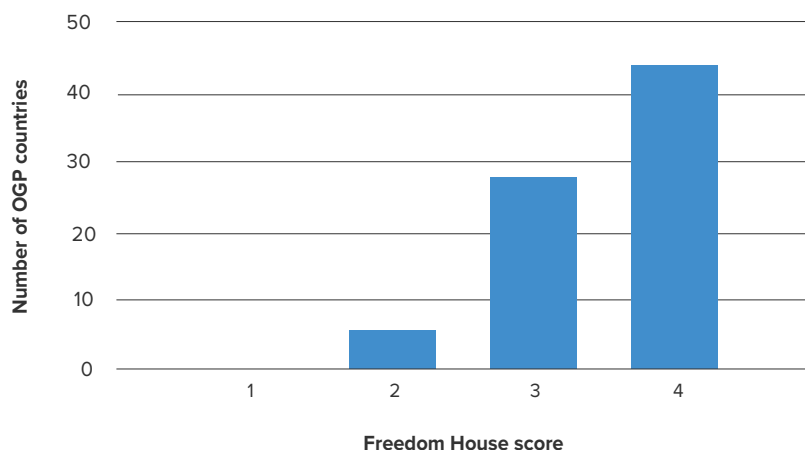
While most OGP countries are relatively strong on issues of free expression for CSOs and individuals, notable constraints remain in over 40 percent of OGP countries (see Figure 5). Moreover, OGP countries are not immune to some of the worst violations:

- **Retaliation:** In five OGP countries, CSOs face retaliation for opposition viewpoints.

- **Killings and disappearances:** In 11 countries, dissidents are “likely” or “very likely” to be imprisoned or killed by agents of the state.
- **Extrajudicial detention:** In 14 countries, respondents stated that activists are “likely” or “very likely” to face extrajudicial detention.
- **Extrajudicial search:** In 17 countries, activists or dissidents are “likely” or “very likely” to experience warrantless searches.

FIGURE 5. In a large minority of OGP countries, individuals expressing political views fear surveillance and retribution

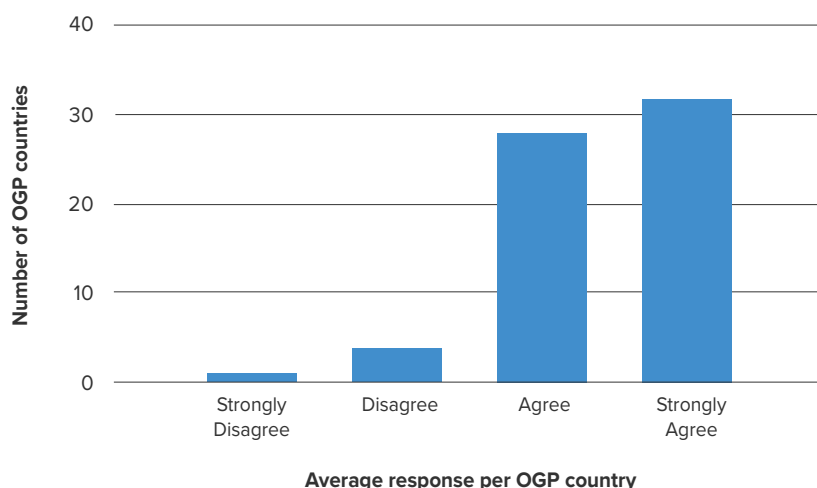
Are individuals free to express their views on political or other sensitive topics without fear of surveillance or retribution? (n=79)



Source: Freedom House, Freedom in the World 2018, D4.

FIGURE 6. In most OGP countries, civil society organizations can speak against the government without fear of retribution

In practice, civil society organizations in [COUNTRY] can freely express opinions against government policies and actions without fear of retaliation. (n=65)



Source: World Justice Project, Rule of Law Index 2017-2018, QRQ 134.



"European Court of Human Rights." Photo by Svetavo, Adobe Stock

Human rights institutions

When human rights violations occur, there is often inadequate reporting, investigation, or follow up, leading to impunity of the violators. This may be because the institutions responsible for protecting human rights do not or cannot investigate or report. Alternately, reporting might occur, but justice is not carried out.

Human rights institutions are bodies set up to protect basic human rights, as proscribed in international and domestic law. While there is much attention paid to international or supranational human rights institutions, OGP is better positioned to improve these institutions at the national level. Some of these bodies are judicial (determining facts and law), some are single-purpose (e.g., truth and reconciliation commissions), and others address human rights across a variety of issues.⁵⁴ In some cases, these institutions provide temporary relief, including accompaniment, safe havens, or evacuation.

Data show a perceived lack of protections against and sanctions for human rights abuses. Organizations tasked with investigating human rights violations are seen as ineffective or not taken seriously by authorities (see Figures 7 and 8).

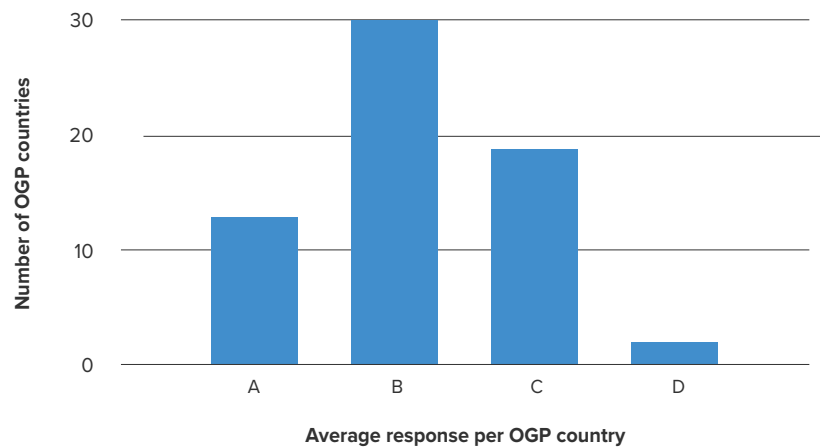
Additionally, Figures 7 and 8 illustrate some of the causes for impunity in OGP countries. Figure 7 shows that almost all OGP countries included in the Rule of Law Index have either a human rights institution, an ombudsman's office, or their equivalent. But in many of the countries, these institutions are ineffective or do not take on major issues. Only 12 countries surveyed have effective institutions.

Figure 8 shows that, even though there are effective institutions in those countries, only half see their findings taken forward to corrective action. Experts in the majority of countries surveyed find there is little action taken on the findings of these institutions.

These findings suggest that in a number of OGP countries, basic investigative powers and independence may be an essential first step. However, in a larger group, creating the means to ensure that findings are acted upon is perhaps more important.

FIGURE 7. In most OGP countries, human rights institutions are slow in responding to abuses

Experts chose the statement that was closest to their views on how the National Human Rights Institution (ombudsman) operates in practice in their country. (n=64)



Source: World Justice Project, Rule of Law Index 2017-2018, QRQ 15.

Key for Figure 7:

(a) The institution is effective in investigating human rights violations.

(b) The institution starts investigations into human rights violations, but is limited in its effectiveness.

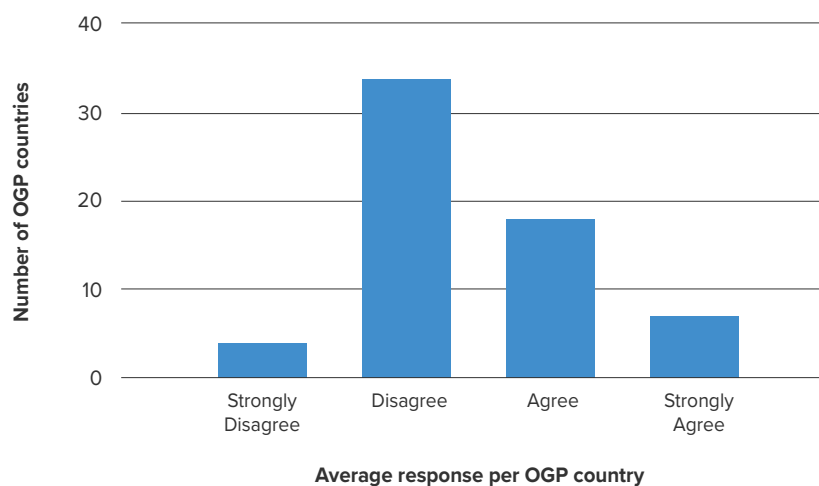
The institution may be slow or unwilling to take on politically sensitive issues.

(c) The institution does not effectively investigate human rights violations.

(d) There is no such institution in my country.

FIGURE 8. In most OGP countries, corrective action for human rights abuses is slow to occur

In practice, the reports issued by the national human rights institution/ombudsman are taken seriously by the authorities, with negative findings drawing prompt corrective action. Figures for OGP countries. (n=63)



Source: World Justice Project, Rule of Law Index 2017-2018, QRQ 16.



LESSONS FROM REFORMERS

Colombia: Opening up information on past abuses

As part of its second action plan (2015–2017), Colombia committed to create a national archive on human rights and historical memory to document the victims of its armed conflict.⁵⁵ During the conflict, an estimated 220,000 people died and more than 7 million people were internally displaced.

In the first year, nearly 230,000 documents were made public. This number rose to 240,000 during the second year.

This collection of information about the conflict in an open data format is critical for helping the country in its process of national reconciliation.

Colombia also has included a commitment to create an integrated information system to track the completion of commitments after the peace agreements as part of its third action plan (2017–2019).⁵⁶ This step is important as Colombia continues to suffer an escalation of attacks against journalists and activists after the signing of these agreements.⁵⁷

Photo by LM Spencer, Adobe Stock

The rise of SLAPPs to silence speech



"Memorial to slain investigative journalist Daphne Caruana Galizia." Photo by Ethan Doyle White, Wikimedia

Daphne Caruana Galizia was a journalist who reported on government corruption in Malta before she was brutally murdered in a car bomb in October 2017. Before her death, Caruana Galizia faced non-stop harassment, including death threats, arson, and lawsuits.⁵⁸ At the time of her death, she faced 47 libel suits from those who wanted to end her reporting, indicative of a growing trend of using strategic lawsuits against public participation, known as SLAPPs, to silence journalists and activists.⁵⁹

What are SLAPPs?

SLAPPs are lawsuits used to harass and intimidate CSOs or individuals, notably environmental and human rights defenders. Plaintiffs usually do not expect to win. Instead, they use the lawsuits to damage the reputation of their critics and force them to spend time and money on legal proceedings. Although many SLAPPs involve defamation claims, they can take many forms and are particularly harmful in places where legal costs are high, speech laws are flexible, and safeguards are non-existent.⁶⁰ As an instrument for powerful interests to silence their critics, SLAPPs pose a clear threat to freedom of speech.

What is the solution?

In response to the murder of Caruana Galizia, Malta decriminalized defamation in April 2018, although no anti-SLAPP provisions were enacted.⁶¹ Elsewhere, anti-SLAPP statutes are slowly taking hold in places like the U.S., Australia, and Canada.⁶² In Ontario, a member of the OGP Local Program, recent legal cases are clarifying how courts can interpret anti-SLAPP statutes to balance freedom of speech and the right to defend oneself.⁶³

Still, more work needs to be done. As a result, future OGP commitments could focus on implementing anti-SLAPP statutes and regulations that:

- Establish penalties for those who file abusive lawsuits, including fines;
- Allow for the early dismissal of abusive lawsuits in court; and
- Enable the recovery of legal costs incurred by defendants who face abusive lawsuits.⁶⁴

Closing the gaps in OGP countries

Given the global backsliding on freedom of expression and civic space, OGP members must create a line of defense to protect activists and journalists. There is a need to continue to benchmark OGP countries against non-OGP countries to see how governments in the Partnership are performing. Current findings suggest OGP countries are doing only slightly better than non-members in defending activists and journalists.⁶⁵

The challenge is how to stop and reverse these negative trends, starting with OGP countries. There are specific dimensions that need to be taken into account when thinking through the right approach:

- **Ensure that responses to other threats are legal and proportionate:** Often, violations against activists are claimed in the name of national security or anti-corruption. Such laws may be distorted to attack activists and journalists.⁶⁶ Currently, these attacks have extended to legislation around cybersecurity, including in OGP member countries.⁶⁷ Responses to threats should be proportionate, specifically targeted to actual threats, and based on law consistent with international standards.
- **Focus on ending impunity:** Often attacks against civil society—particularly journalists—go unpunished and unacknowledged. Findings suggest journalists’ killers go free in nine out of ten cases.⁶⁸ This requires a systemic approach—perhaps through action plan commitments—that target broader access to justice initiatives to protect activists and journalists, including police investigations, access to legal counsel, guaranteed due process, and witness protection. Essential to this is an independent and non-susceptible judiciary.
- **Consider the unique needs of all victims:** Evidence has shown that repression, harassment, and violence can manifest differently against women and minority groups (including sexual, racial, and religious minorities).⁶⁹ For example, rape and sexualized attacks are deployed to silence women’s groups.⁷⁰ In thinking through OGP commitments, women’s rights, indigenous rights, and LGBT+ rights

organizations have unique and specific political demands that must be heard and which require specific commitments.⁷¹

The findings are clear: activists and journalists are fundamental to both open government and a healthy, engaged civil society. Defending the critical role they play should be a consideration of any OGP country, particularly given the reach and severity of the challenges they face. Reflecting the difficult realities described above, the next generation of OGP commitments could include a number of concrete steps for prevention, protection, and sanctions. (See “Guidance and Standards” box in this section for detailed sample commitments to promote and protect free and independent media.)

Actions for prevention

Data

- Collect official open data (e.g., reports filed on killings, harassment, other forms of violence against civil society actors, and the number of cases investigated and prosecuted) with adequate privacy protections, especially where threats include sexual assault.

Capacity building

- Establish training programs on respecting and protecting expression. All state authorities responsible for protecting journalists and freedom of expression should participate.
- Ensure CSOs know their rights and obligations under the law, and facilitate access to counsel, including sound legal and accounting advice.
- Engage organizations representing women and other minorities in crafting solutions to harassment and violence.
- Establish training programs on physical, digital, and psychological safety for CSOs.
- Educate and engage broader the civil society about their obligations to publicly defend activists and journalists, including online.

Media environment

- Increase international pressure on state-led harassment, detention, or killing; establish rules and protections for press freedom in digital and print media; establish guidance on safety of journalists; and create conditions for greater media pluralism.
- Involve civil society and media outlets in the development of laws around media ownership to encourage media pluralism while ensuring legality, minimal interference, and proportionality in response. This may include negotiating rules independence of state-funded media, political party ownership of media, or ownership registries.
- Improve media access to all government institutions.
- Assess, reform, and revise rules on content and defamation as needed in consultation with media and civil society.

Actions for protection

- Adopt, implement, and report on whistleblower protections, aligned with global best practice and standards.
- Provide rapid early-warning, and emergency support to activists (including security, relocation, travel, work, and family assistance).
- Guarantee effective protection of female and LGBT+ media and civil society actors from gender-related dangers of their work.

Sanctions

- Remove statute of limitations to investigate crimes against the freedom of expression.
- Set out strong protections to investigate and prosecute violence against journalists and other civil society actors (ensuring access to justice).
- Establish adequate levels of compensation for victims of crimes against activists and journalists.
- Provide judicial remedy (such as sanctions) against countries where there are cases of impunity for attacks against activists and journalists.



Sample commitments for enabling media environment



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Commitments that ensure an enabling environment for a free and independent media perfectly align with OGP's founding declaration and underlying pillars: transparency, accountability, and participation.

Whistleblowers

- Action area: Adopt, implement, and report on whistleblower protections that are aligned with global best practices and standards.
- Action: Inform the public of whistleblowing rights, including disseminating relevant information on protections and mechanisms.
- Action: Ensure competent authorities have the mandate, power, and resources to facilitate and protect whistleblowing, especially where adequate channels of whistleblowing do not exist.

Content rules

- Action area: Assess, reform, and revise as needed rules on content (e.g., libel and defamation laws, censorship, and hate speech provisions) and on media regulation

(e.g., public and private broadcasting rules).

- Action: Reform laws to depenalize criminal defamation and ensure press freedoms.
- Action: Work with companies and civil society organisations to establish fact-checking initiatives around electoral processes.
- Action: Guarantee and protect the media's right to investigate, criticize, and express opinions.
- Action: Develop monitoring mechanisms to provide track the internationally-agreed targets of the SDG process.
- Action: Ensure media regulations promote a free, independent, and diverse media.

Access

- Action area: Provide the media with open access to all government institutions.
- Action: Permit media to record (audio/visual) and disseminate (e.g., television, radio, print, and online) all parliamentary committee hearings and discussions.

- Action: Establish media and press centers in all government ministries and institutions, and provide for formal and regular press conferences.
- Action: Put in place rules on open meetings so that all decision-making meetings are open by default and may be closed only for appropriate reasons (such as to protect privacy).

Protections

- Action area: Establish strong protections to prevent, investigate, and prosecute violence against journalists.
- Action: Establish government protection programs for at-risk journalists, including early warning and rapid-response mechanisms.
- Action: Set up investigative programs and provide resources to investigate and prosecute threats to, and attacks on, freedom of expression.
- Action: Remove statute of limitations to investigate crimes against the freedom of expression.
- Action: Guarantee effective protection of female journalists and other female media actors from gender-related dangers of their work.
- Action: Establish training programs for all state authorities responsible for protecting journalists and freedom of expression.

Ownership

- Action area: Review, amend, and align national broadcasting and media laws to ensure diversity, independence, and transparency of ownership.

- Action: Track and publish the beneficial owners of media companies as part of a government's broader open data policy.
- Action: Review and update cross-ownership rules to ensure diversity, independence, and transparency of media ownership.
- Action: Establish a regulatory framework and commission to cap media ownership shares, monitor media concentration, and review licensing.
- Action: Establish mechanisms for the public to participate in the review and approval of media licensing and mergers and acquisitions.

Online access

- Action area: Establish laws and other necessary measures to ensure a free and open internet.
- Action: Prevent illegal internet shutdowns and the blocking of specific sites.
- Action: Establish a comprehensive open internet regulatory framework.
- Action: Establish internet connectivity as a basic right, with appropriate pricing mechanisms to ensure universal access and minimal restrictions.
- Action: Establish government strategies and frameworks for increasing connectivity among specific and/or marginalized groups in a country.
- Action: Update and maintain robust net neutrality regulations to ensure no throttling, blocking, or paid prioritization of content.



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