Digital Governance

OGP members are working to ensure that digital governance measures align with open government values like transparency, civic participation, and public accountability. Pictured: Andrew G. Temmeh, the then-Deputy Minister of Administration at the Ministry of Information in Liberia.

Automated Decision-Making, Algorithms, and Artificial Intelligence

Governments are increasingly using automated decision-making (ADM) to assess eligibility for government benefits, detect fraud, and allocate resources. ADM can potentially make governments fairer, more efficient, and more effective. To do so, however, it needs appropriate oversight and safeguards. Without safeguards, ADM can reproduce or amplify existing biases in denying welfare benefits, misidentifying innocent people, or misdiagnosing illness. In the context of private sector activity, the use of ADM systems and algorithms also benefits from safeguards that balance innovation with protection of rights. Improving transparency, participation, and accountability can help maximize the benefits and minimize the harms.

Open Gov Challenge
Digital Governance

With OGP's 2023-2028 Strategy, OGP members are set to work toward a number of aspirational thematic reforms through the Open Gov Challenge. This section of the *Open Gov Guide* addresses Digital Governance.

Challenge prompt: Strengthen transparency and public oversight of AI and data protection frameworks.

For new or existing AI, data processing, and automated decision-making policies, especially those governing the public sector, actions and reforms could include:

- Making underlying data publicly available (such as through transparency registers for algorithms).

- Embedding human rights impact assessments.

- Creating public grievance mechanisms.

- Creating or strengthening independent oversight agencies.

- Creating specific public consultation opportunities.

- Creating specific mechanisms to promote digital inclusion or to prevent online discrimination.

Key Terms

- **Algorithmic transparency:** Algorithmic transparency is the [ability](#) of internal or external actors to obtain information, monitor, test, critique, or evaluate the logic, procedures, and performance of an algorithmic system.

- **Automated decision-making (ADM):** ADM is the processing of personal data using digital means, either without human involvement or in hybrid systems where some portion of decision-making is carried out by algorithms.
    - ADM includes algorithmic decision-making, which uses artificial intelligence (AI) algorithms to process data and conduct statistical analyses to automate or support a decision-making process.

- **Data Protection Authority (DPA):** In many jurisdictions, the DPA oversees and regulates algorithmic decision-making and personal data processing. Powers may include issuing regulations and guidelines, hearing complaints, and investigating issues of concern.

The Evidence

Because it is a relatively new area of work, more research is needed to understand the most effective open government approaches to govern ADM. [Early research](#), however, shows that increasing transparency, civic participation, and public accountability have a positive effect.

- [Public scrutiny](#) of algorithms has been shown to help identify bias according to social status, gender, and other characteristics.

- [Explanations](#) of how ADM systems work can build trust with the public and create avenues of participation, with recent [participatory initiatives](#) showing that members of the public can investigate highly technical topics.

- ADM has been used effectively to support open government practices, such as detecting fraud or corruption. For example, Valencia, Spain's [SALER system](#) allows officials and members of the public to flag conflicts of interest in the public procurement process.

Reform Guidance

Recommended Reforms

The recommendations below represent reforms that national and local governments, representatives of civil society organizations, and others can consider for their action plans and the Open Gov Challenge. The reforms are categorized according to OGP's principal values: transparency, civic participation, and public accountability. Reforms should be adapted to fit the domestic context, and involve and coordinate with other levels and branches of government.

Reforms across policy areas are also tagged by the estimated degree of difficulty in implementation. Though progress is often not linear, the recommendations have been categorized using these labels to give the reader a sense of how different reforms can work together to raise the ambition of open government approaches.

- **Foundational:** This tag is used for reforms that are the essential building blocks of a policy area. "Foundational" does not mean low ambition or low impact. These recommendations often establish basic legal and institutional structures.
- **Intermediate:** This tag is used for reforms that are more complex and often involve more coordination and outreach, such as with the public, between branches, agencies, and levels of government, or between countries.
- **Advanced:** This tag is used for reforms that close important loopholes to make existing work more effective and impactful. They are often about linking multiple databases or ensuring that oversight authorities can receive complaints from members of the public.

FOUNDATIONS

☐ **Create a legal framework for data protection:** Establish basic framework laws on data protection, including the establishment or enhancement of a DPA.

> Transparency · Public Accountability · Legislature · Foundational

☐ **Establish agency-level guidance:** Establish basic guidance and shared terminology on technology design and adoption for agencies to follow in terms of procurement to ensure that community needs are met, including fairness, transparency, privacy, and human rights. Such standards should be publicly available, reported on, and developed in consultation with community input.

> Transparency · Civic Participation · Public Accountability · Executive · Foundational

☐ **Create a public interface for DPAs and other regulators:** Ensure that the DPA and any other relevant regulators are capable of receiving, investigating, and prosecuting (or referring) cases of harm. This may also include expansion of subpoena and inspection powers by the DPA.

> Transparency · Civic Participation · Public Accountability · Legislature · Foundational

☐ **Report regularly on high-risk activities:** Authorize the DPA to identify major high-risk activities inside and outside of government and to make referrals to other agencies for regulatory or other action.
  - ☐ This includes submitting regular reports to the legislature on data protection and other topics under the DPA's mandate.

> Transparency · Legislature · Foundational

☐ **Mandate the use of impact assessments:** Authorize the DPA to mandate the use of impact assessments for agencies under its purview. This can identify potential bias or discrimination in an ADM system before it is put into use, and can include mechanisms for the public to give input on and access such assessments. Canada's Directive on Automated Decision-Making provides an example of what this looks like in practice.

> Transparency
> Civic Participation
> Legislature   Intermediate

☐ **Establish guidelines to purchase AI systems:** Establish and publish basic guidelines for government procurement of AI systems, such as assessing risks and creating accountability mechanisms before purchase.
  ☐ Such guidelines can include requirements for the formation of a multi-stakeholder oversight group to advise and report on AI procurement.

> Transparency
> Executive   Intermediate

☐ **Train public officials on ADM:** Provide training for public officials on how ADM systems work, including the general capacity building needed to understand the basics of ADM technology as well as knowledge of the specific systems used in a given agency.

> Civic Participation
> Executive   Intermediate

TRANSPARENCY

☐ **Require notifications of data breaches.**

> Transparency
> Executive   Foundational

☐ **Require notifications for the use of ADM:** Require notifications to those who are affected by decisions made by an ADM system. This should include mechanisms for the public to challenge automated decisions or to request exclusion from ADM systems, such as in the Republic of Korea.

> Transparency
> Executive   Foundational

☐ **Require notice and consent for processing:** Require disclosure and consent to data processing activities when using online tools, including data collection, storage, use, and modification.

> Transparency
> Executive   Foundational

☐ **Create an algorithm register:** Establish or enhance a data processing register. Such registers may focus on government (and contractor) processing or cover non-governmental activities. A register may support the proactive publication of algorithmic impact assessments.
  ☐ Algorithmic transparency may include data on many elements of an ADM system beyond the source code, including the system's existence, purpose, governing rules and structure, real-world impacts, training data, inputs, and outputs.

> Transparency
> Legislature
> Intermediate

☐ **Require data processing reports:** Require all ADM systems to disclose information that establishes and regularly renews a clear legal and ethical basis for how they collect, store, share, use, and modify data. This might include establishing individual consent or establishing social license through participatory processes.

> Transparency
> Executive
> Intermediate

☐ **Standardize impact reporting:** Adopt or enhance procedures to standardize privacy and human rights impact assessments. Ensure that the public can scrutinize and give inputs on such reports and raise flags about irregularities.

> Transparency
> Civic Participation
> Legislature   Advanced

CIVIC PARTICIPATION

☐ **Conduct consultations with the public:** Conduct consultations where relevant members of the public can inform the design and pilot stages of technology that affects them (such as algorithms used in ADM systems). Examples of this include deliberative models of participation at national and local levels.

> ☐ Ensure that such consultations include targeted outreach to vulnerable communities, who tend to experience negative impacts from data collection and technology use.

Civic Participation

Executive   Legislature

Inclusion

Intermediate
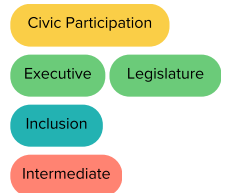
PUBLIC ACCOUNTABILITY

☐ **Create public complaint mechanisms:** Create public complaint mechanisms (including judicial, quasi-judicial, and ombudsperson structures) to report violations of the law. This is necessary to ensure the public has a means to communicate whether and how the social acceptance of a company's or industry's practices have changed, which can be used to identify gaps in current legal frameworks.

Public Accountability

Legislature   Intermediate

☐ **Conduct regular audits:** Conduct regular audits of ADM systems through independent oversight bodies and civic monitors (such as a social audit).

Public Accountability

Executive   Legislature

Intermediate

☐ **Publish enforcement and compliance history:** Make enforcement and compliance history available online, which can be used to support future enforcement actions.

Transparency

Public Accountability

Executive   Advanced

Examples of Reforms from OGP and Beyond

The following examples are commitments previously made within or beyond OGP that demonstrate elements of the recommendations made above. This is an emerging area of focus for OGP members, with recent commitments made on ADM.

- **Canada Algorithmic Impact Assessments in ADM:** Requires agencies using ADM to conduct and publish impact assessments before the deployment of any ADM system and to update the system when there is a change in its functionality or scope.

- **Netherlands Guidance for Making Algorithms Accessible:** Committed to establishing guidance and a decision tree for agencies, including guidance and tools for making algorithms openly available.

- **New Zealand Plans to Implement the Algorithm Charter:** Committed to implementing its Algorithm Charter, such as consulting with the agencies that signed the charter to prioritize recommendations related to understanding and addressing the risk of using algorithms in their work.

- **Scotland, United Kingdom Transparency Measures for Government Decision-Making:** Committed to increasing the accessibility of government data, such as opening data related to government decision-making and developing a public register of AI algorithms.

- **Uruguay Multi-Stakeholder Oversight Body for AI Use:** Committed to creating a multi-stakeholder oversight body on the government's use of AI.

BEYOND OGP ACTION PLANS

- **European Union Requiring Human Intervention in AI Systems:** Explicitly requires human intervention in high-risk AI systems, such as facial recognition software and systems to evaluate the eligibility of natural persons for public benefits and creditworthiness.

- **Nigeria DPA Process to Increase Auditing Effectiveness:** Established a process to license and register authorized auditors, conduct training and provide consulting on data protection compliance.

- **South Africa DPA Enforcement to Protect Personal Data:** Mandated to take steps to limit or stop processing personal data, based on a specified time frame where the controller of data must comply with the DPA's decision.

The Role of Local Governments

Local governments are frequently the procurers or developers of ADM systems. They play a special role in ensuring that such systems meet their own objectives, including effectiveness, efficiency, fairness, and explainability. These objectives must be made transparent to the public and explained to intermediaries, such as journalists.

Indeed, several cities (such as Amsterdam, New York, and Nantes) have been much quicker than their national counterparts in publicizing their use of ADM, such as through algorithm registers. In the absence of national legislation, provincial and state governments have often led legal reform and innovation in the area of transparency.

Of course, many local governments or agencies may not have the capacity to evaluate certain ADM systems. In this case, they may have a special role to act together to evaluate the merits of different systems and vendors.

Active OGP Partners

The following organizations have recently worked on this issue in the context of OGP at the national or international level. They may have additional insights on the topic. Please note that this list is not exhaustive. If you are interested in national-level initiatives, please contact research@opengovpartnership.org.

- Access Now
- Ada Lovelace Institute
- AI Now Institute
- ALT Advisory
- Center for Democracy and Technology
- Connected by Data
- Data & Society
- DataSketch
- Open Data Charter

Benchmarking Data

The OGP 2023-2028 Strategy sets out the Open Gov Challenge and aims to provide clear benchmarks for performance through reliable data.

While benchmarks for individual countries and *Open Gov Guide* recommendations are not yet integrated, for this chapter, interested individuals may rely on the following data sets:

- **Data for Development** (D4D) will release the Global Index on Responsible AI on the quality of AI oversight, including adherence to OGP values of transparency, civic participation, and public accountability.

- Data Protection Africa, managed by **ALT Advisory**, maps data protection laws in 55 countries on the continent.

- OGP commitments on this topic can be found on the Data Dashboard.

Guidance and Standards

While the list below is not exhaustive, it aims to provide a range of recommendations, standards, and analysis to guide reform in this policy area.

- **Ada Lovelace Institute**, **AI Now Institute**, and the **OGP Support Unit** collaborated on a publication that draws lessons from public sector policy implementation examples related to algorithmic accountability. The resource includes an analysis of the limits of legal and policy mechanisms in ensuring safe and accountable algorithmic systems.

- **ALT Advisory** (South Africa) and the **OGP Support Unit** published *Data Protection in Africa: A Survey of Member Progress*, which aims to analyze the context and major barriers to effective data protection among OGP members in Africa. It also makes recommendations that strengthen data protection in the region.

- The **University of Adolfo Ibáñez** and the **OGP Support Unit** conducted a state-of-the-evidence review of algorithmic transparency and accountability standards and recommendations, which informed the "Algorithmic Transparency" chapter of the 2022 edition of the *Skeptic's Guide to Open Government*.

- **Connected by Data** produced a report on how to secure meaningful commitments on data and AI governance, following a design workshop at the 2023 OGP Summit in Estonia with civil society representatives, government officials, and academics.

- The **OGP Support Unit**'s Open Algorithms blog series brings together recommendations and examples of good practices from government reformers and civil society members working on algorithmic accountability.

- **Data for Development** (D4D) will release the Global Index on Responsible AI on the quality of AI oversight, including adherence to OGP values of transparency, civic participation, and public accountability.

- Many countries have begun considering guidelines to address AI and data protection concerns, with the **United Kingdom**'s Data Ethics Framework providing an especially useful example of more formalized guidance.