The Open Gov Guide

2024

Open Government Partnership

Civic Space

The Gwanghwamoon 1st Street platform aims to increase civic participation in the Republic of Korea. Pictured: A third-grade class from Jeju Island used the Gwanghwamoon 1st Street petition platform to successfully advocate for a ban on frozen ice packs in food delivery.

Freedom of Assembly

Freedom of assembly allows the public to peacefully engage in collective expression, mediate differences of opinion, and bring attention to issues of public importance. Increasingly, however, governments worldwide often resort to restricting or violently repressing gatherings. Without freedom of assembly, society suffers—the public loses an important avenue to participate in open government, and governments diminish their own ability to respond to crises.

Open Gov Challenge
Civic Space

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 Civic Space.

Challenge prompt: Strengthen enabling environment and spaces for civil society and civic action.

Actions and reforms could include:

- Designing and implementing non-profit law in a way that is impartial and minimally restrictive on the operations of independent organizations.

- Taking steps to train and support local authorities in respecting and protecting the right to freely assemble in an unbiased and minimally restrictive manner.

- Establish or strengthen existing spaces for government-civil society collaboration (such as the OGP multi-stakeholder forum) to initiate dialogue on civic space challenges and to inform design of reforms.

Key Terms

- **Freedom of assembly:** The right of peaceful assembly protects the non-violent gathering of people to express, promote, and defend common interests collectively, without fear of retribution. Gatherings can take place in public or private spaces, online and offline, or in some combination of these locations.

The Evidence

The evidence shows that freedom of assembly can magnify the positive effect of other open government reforms.

- Respecting civic freedoms can support healthy economic growth and improve human development outcomes, as research from V-DEM and The B Team shows.

- Non-violent resistance campaigns are associated with the sustained success of democratic transitions by creating democratic institutions of higher quality.

- Protecting the freedom of assembly creates avenues for inclusion in policy-making and implementation, particularly for marginalized or opposition groups. This is critical to ensure no one is left behind in policy-making or implementation.

- Assemblies can advance other open government reforms by sustaining public focus on issues, which can encourage people to vote in higher numbers and provide momentum for litigation.

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.

AUTHORIZATION AND ENFORCEMENT

☐ **Limit restrictions on assemblies:** Ensure legislation and rules limit restrictions that require individuals to seek permits to organize planned assemblies. Specifically, no authorization should be required to hold an assembly, following internationally agreed-upon standards.

    ☐ Any restrictions on assemblies should be prescribed clearly by law, narrowly tailored, and necessary.

    ☐ Any notification requirements should aim to assist authorities with facilitating the exercise of assembly rights, and spontaneous gatherings should be permitted.

> Civic Participation
>
> Executive
>
> Legislature
>
> Foundational

☐ **Establish rules on the management of protests by security forces:**
Establish rules to ensure that law enforcement is trained to police
assemblies in a manner consistent with relevant human rights standards.
Only these trained officers should be used to manage assemblies.

> ☐ Introduce measures to prohibit the use of private and parastate security
> forces to manage protests and assemblies. Such measures should
> ensure that private security services do not perform policing functions
> during assemblies in lieu of democratically controlled police forces.
>
> ☐ The military should not be used to police assemblies. Military personnel
> may be deployed to manage protests and assemblies only when the
> following conditions are met: in exceptional circumstances, on a
> temporary basis, in a support capacity, and after receiving appropriate
> human rights training.

`Civic Participation` `Legislature` `Intermediate`

☐ **Establish rules on the public use of private land:** Introduce rules to clarify
and allow for the right of assembly on publicly accessible private land,
especially where that land serves as a public gathering place, such as
shopping malls.

`Civic Participation` `Legislature` `Advanced`

☐ **Establish proportionate legal responses:** Ensure that criminal or
administrative liability imposed in connection with organizing and
participating in protests is clearly prescribed and proportionate to the
underlying conduct. For example, prosecutors should not prosecute
organizers for actions made in "good faith" or for participants not involved
in violent actions.

> ☐ This would include the proportionate application and use of civil and
> administrative fines and penalties for violations.
>
> ☐ Criminal liability should never be imposed for the mere act of organizing
> or participating in a protest.
>
> ☐ Ensure that other vague policy frameworks—such as for public morality
> or national security—are not misused for prosecuting and limiting
> assembly.

`Civic Participation` `Public Accountability` `Foundational`

☐ **Establish and maintain multi-stakeholder oversight commissions:**
Establish multi-stakeholder commissions, which can relieve police of the
duty to determine the legality of an assembly.

`Civic Participation` `Public Accountability` `Legislature` `Advanced`

POLICE CONDUCT IN ASSEMBLIES

☐ **Establish and publish police protocols:** Establish and publish open, clear,
and ethical protocols addressing police conduct before, during, and
following protests. Require regular and ad hoc reporting to the legislature
on these protocols. For example, Nigeria committed to co-create a guide on
peaceful protests.

`Transparency` `Executive` `Legislature` `Foundational`

☐ **Train police officers in protocols:** Train police officers in proportionate
responses and requirements for the use of uniformed police at assemblies.

`Civic Participation` `Executive` `Foundational`

☐ **Publish guidance on the use of force:** Make the guidance for <u>use of force and equipment</u> transparent and easily accessible, including post-assembly reporting of police operations.

> ☐ Laws should limit the circumstances in which any use of force can be used, and require the exhaustion of non-violent means before using force, which should be authorized only where absolutely necessary. This includes limiting the use of containment strategies to exceptional cases.

`Transparency` `Executive` `Intermediate`

☐ **Publish information on police conduct:** Publish information on the conduct of police officers during assemblies and protests following events.

`Transparency` `Executive` `Intermediate`

PROTECTIONS

☐ **Create multi-level legal frameworks:** Create stronger legal frameworks that protect the freedom of assembly in a multi-level approach from the local, state, and national or federal levels. Frameworks should provide accountability for violations committed by law enforcement or other officials during protests and assemblies.

`Civic Participation` `Legislature` `Advanced`

☐ **Create regulations for detentions:** Create regulations on the use of detention, which impacts detentions in the context of assemblies. Any detentions must meet a set of legal "minimum standards," including due process protections and the requirement of individualized suspicion.

`Civic Participation` `Legislature` `Intermediate`

☐ **Create legal protections for independent monitors:** Adopt <u>legal and practical protections</u> for independent monitors to provide oversight of police and protester actions during assemblies.

`Public Accountability` `Legislature` `Intermediate`

☐ **Co-create legislation related to free assembly with civil society:** Strengthen and support more systemic participation of civil society in drafting legislation related to this right, focusing on relationships with a broad coalition of civil society partners working across different issue areas.

> ☐ Diversity and inclusivity are key to developing commitments that respond to the needs of the community and advance civic space priorities, with special attention to women's groups and the youth in government decision-making processes.

`Civic Participation` `Legislature` `Inclusion` `Advanced`

☐ **Protect free access to the internet:** Guarantee unobstructed access to social platforms and the broader web at all times to allow mobilizing, sharing, and creating content. Under no circumstances should the authorities shut down, throttle, or block internet services (in whole or in part). Protecting public safety or public order is insufficient justification for restricting internet services in any way. In practice, such disruptions to internet connectivity tend to undermine the access to information needed to guarantee public safety while also encouraging abuses.

`Civic Participation` `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. To date, only a handful of OGP countries have commitments related to freedom of assembly.

- **Indonesia Restorative Justice Methods to Protect Basic Rights:** Committed to conducting and using research to design roadmaps on restorative justice related to the right to information, the right to expression, and the right to assemble.

- **Nigeria Co-creation and Dialogue on Peaceful Protests:** Committed to co-creating a guide on peaceful protests with civil society and the police and organizing citizen-police dialogues with independent bodies like the National Human Rights Commission.

- **Ukraine Draft Law Created through Cross-Ministerial Collaboration:** Developed a draft law on organizing peaceful assemblies, with various ministries (such as the Ministry of Justice, Ministry of the Interior, and Cabinet of Ministers) actively engaged in the process.

BEYOND OGP ACTION PLANS

- **Chile Accountability for Police Violence during Protests:** Opened over a thousand investigations, disciplined hundreds of officers, and fired at least 14 following calls for accountability from rights' groups that documented police violence against protestors.

The Role of Local Governments

Local governments can provide a critical bulwark to attacks on the freedom of assembly, especially in countries where national laws are either too vague (applied broadly to target all assemblies) or too specific (making the process of hosting a demonstration too onerous or risky). As the International Center for Not-for-Profit Law (ICNL) describes, local governments have been particularly active in enacting new safeguards to protect this right.

For example, following a campaign by Colombian CSOs, in 2019 "the cities of Barranquilla and Cali established new protection protocols and guarantees for protests, though local authorities have not fully implemented these instruments since their adoption." This trend is also visible in the United States, where civil society pushed for municipal and state policy makers to introduce new reforms to safeguard the freedom of assembly. According to ICNL's tracker, reforms included "new limits on the use of tear gas and other less lethal weapons against protesters, bans on the deployment of facial recognition technology to surveil protesters, and requirements that officers display identifying information when they police protests, to enhance their accountability."

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.

- CIVICUS
- Community of Democracies
- Hivos
- International Center for Not-for-Profit Law (ICNL)

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:

- The **CIVICUS** Monitor tracks data related to civic space in 196 countries to determine whether a country is closed, repressed, obstructed, narrowed, or open.

- The **Freedom House** *Freedom in the World* report analyzes the state of political and civil rights in 195 countries and 15 territories.

- **International IDEA**'s Democracy Tracker provides monthly updates to global events with the potential to impact the state of democracy and human rights in 173 countries. This tracker is part of the organization's Global State of Democracy Initiative.

- The **V-DEM** Dataset provides a comprehensive analysis of democracy ratings, including indicators on civic space.

- The **World Justice Project**'s Rule of Law Index analyzes different dimensions of governance in 140 countries and jurisdictions, including several related to civic space.

- 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.

- An overview of recommendations and guidance related to this topic can be found in the **OGP Support Unit**'s *Global Report*.

- The **UN Human Rights Committee** provides additional guidance to States parties of the International Covenant on Civil and Political Rights in General Comment 37, which includes guidance on the scope of peaceful assemblies and the duties and powers of law enforcement in policing assemblies.

- The **UN Development Programme** and **ICNL** collaborated on a toolkit outlining the legal frameworks for civic space. The toolkit includes guidance on protecting the rights to free expression, free assembly, and free association.

- **ICNL** offers guidance on trends and strategies to resist government crackdowns on the freedom of assembly, including positive examples of reform and resistance.

- The **Organisation for Security and Co-operation in Europe** created a set of guidelines on peaceful assembly, which focuses on how legislators and other practitioners can draft and implement laws to protect the freedom of assembly.

- The **African Commission on Human and People's Rights** has issued regional guidelines on the freedom of association and the freedom of assembly.

- The **European Center for Not-for-Profit Law** (ECNL) provides guidance on protests and assemblies in general, as well as analysis of how UN standards can be used to safeguard the freedom of assembly. ECNL also updated its handbook on how to use EU law to protect the rights of assembly, association, and expression in 2023.

- The **International Finance Corporation** published a handbook specifically focused on the use of security forces, which includes guidance on the protection of the freedom of assembly.