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 Association

Freedom of association is a pillar of open government. This freedom powers the ability to act collectively. For open government to work, people must be able to join together, seek funding, and pursue common purposes—whether cultural, political, or economic. However, as with free expression and free assembly, governments worldwide have tightened restrictions on civil society organizations (CSOs) and other groups, particularly by limiting funding and creating legal barriers to operating.

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 association:** Freedom of association is the right to join a formal or informal group to take collective action. It also includes the right not to be compelled to join an association. Associations can include CSOs, clubs, cooperatives, non-governmental organizations (NGOs), religious associations, political parties, trade unions, foundations, and even online associations. Under international law and standards, an association should not have to be legally registered in order to operate, though legal frameworks may permissibly condition access to certain privileges and benefits upon an association securing legal personality.

The Evidence

The evidence shows that freedom of association 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.

- Collective action has helped protect marginalized groups by holding governments accountable when their needs are not met, providing services to address gaps in public service delivery, and ensuring greater inclusion in setting policy priorities.

- CSOs have exposed corruption as the primary users of anti-corruption tools.

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.

CSO FORMATION AND REGISTRATION

☐ **Remove barriers to CSO registration:** Eliminate requirements for CSOs to secure legal registration in order to operate, and remove any restrictions particularly limiting the exercise of associational rights by certain groups.

> ☐ Ensure that rules regarding the formation and registration of CSOs are fair, transparent, and evenly applied to allow minority or unpopular viewpoints to be advanced by CSOs and expressed in advocacy.
>
> ☐ This is particularly important for organizations working on sensitive issues, such as anti-corruption, environment and land, human rights, political reform, and rights and access to services for women, especially with groups most at risk of harassment, including LGBTQIA+ individuals, religious minorities, and indigenous people.

`Civic Participation` `Executive` `Legislature` `Inclusion` `Foundational`

☐ **Establish and publish objective, transparent criteria for granting legal status to CSOs, including non-profit status:** Establish and publish laws and regulations governing the process to grant legal status to CSOs, which should include objective, transparent criteria for the approval of non-profit status. Such laws and regulations should limit the scope of official discretion in adjudicating applications for this status to minimize abuse of the process.

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

☐ **Simplify CSO registration:** Ensure CSOs can register through a simple, established process with clear time limits, which is equally accessible throughout the country.

> ☐ Reduce the number of registration documents, registration fees, and the number of agencies an organization must interact with to register.
>
> ☐ Clarify rules and minimize restrictions on foreign organizations in line with all domestic rights and regulations.

`Civic Participation` `Executive` `Intermediate`

☐ **Create an appeals process:** Create an appeals process to ensure there is an adequate remedy for appealing denials of legal status to CSOs, including through both administrative and judicial means.

`Public Accountability` `Legislature` `Intermediate`

ORGANIZATIONAL RULES AND OPERATING ENVIRONMENT

☐ **Require minimum internal governance standards for CSOs:** Require minimum governance standards for CSOs, which should be addressed in their internal governing documents. The requirements may be different for membership and non-membership organizations. A CSO should have broad discretion to set and change its governance structure within the limits provided by law, through its founders or highest governing body.

`Civic Participation` `Legislature` `Foundational`

☐ **Establish limitations on interference with the governance and activities of CSOs:** Avoid interfering with the internal governance and management of CSOs, except as required to serve a legitimate purpose under international law. CSOs should generally be free to draft their own rules and regulations, select their own management and representatives, and determine their own objectives and activities, in line with international human rights standards. CSOs should not be subject to more burdensome or restrictive regulations or requirements than other legal entities, such as corporations, private companies, and religious institutions.

`Civic Participation` `Executive` `Legislature` `Foundational`

☐ **Create a non-profit register:** Establish a single registry of all non-profit organizations with legal personhood. For example, North Macedonia committed to creating such a register through OGP. This register should be no more burdensome or restrictive than any other register of legal personalities and entities (such as company beneficial ownership registers or open cadastres).

`Transparency` `Legislature` `Intermediate`

☐ **Ensure fair application of fraud and abuse rules:** Create and publish narrowly defined guidance to minimize abuse by regulatory authorities. This can reduce the abuse of non-profit organizations by corrupt actors. At the same time, to reduce abuse by regulatory authorities, it is essential to ensure that such rules are applied in a non-discriminatory, legal, and proportionate fashion.

`Transparency` `Civic Participation` `Legislature` `Intermediate`

☐ **Train public officials:** Ensure that public and administration officials are well-trained and sensitized to the varying capacity and formality of CSOs when providing services.

`Civic Participation` `Executive` `Intermediate`

FUNDING AND RESOURCES

☐ **Publish tax benefit rules.**

Transparency

Civic Participation

Executive   Foundational

☐ Such approaches must account for rights to free speech, advocacy, and education, while also maintaining adequate protections for the integrity of elections or legislative and regulatory processes.

☐ **Promote sustainable funding:** Promote funding opportunities and mechanisms to ensure organizational sustainability, which helps CSOs and other groups plan for the long term. Examples of this are below.

Civic Participation

Legislature

Advanced

☐ Provide tax exemptions to CSOs on most, if not all, categories of income.

☐ Provide tax benefits and tax incentives to individuals and businesses that donate to CSOs.

☐ Provide access to international funding without the need for prior government registration or permission, or the use of state-controlled entities as an intermediary.

☐ Ensure the availability of core and infrastructure funding, as well as longer-term funding (three years or more), where state funding is essential. As appropriate, establish or strengthen a transparent, rule-based, dedicated state-run fund(s) to support CSO activities and institutional development in priority areas.

☐ Ensure legal ability to carry out independent, public fundraising activities in accordance with the law and to access foreign funding.

REPORTING

☐ **Align reporting regulations with international standards:** Ensure that reporting regulations follow international standards, such as those related to privacy and minimal state interference, to limit restrictions on CSOs and other association groups.

Civic Participation

Legislature

Intermediate

☐ **Create narrowly tailored and transparent auditing procedures:** Limit government-imposed audit requirements for CSOs to situations where these associations receive public funding. In those circumstances, adopt and implement transparent audit procedures for government auditing agencies to follow, including conditions triggering an audit, advance notice, procedures for random audits, restrictions on the use of audits for personal information or harassment, and reporting on the use of public funds.

Transparency

Public Accountability

Executive

Intermediate

☐ **Standardize reporting data:** Standardize data reporting of public funds provided to CSOs and projects supported by such funds in an open data format, such as through the International Aid Transparency Initiative.

Transparency

Executive

Intermediate

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. More than half of countries in OGP allow unregistered CSOs to operate freely, with most members allowing CSOs to receive international funding without prior government approval or registration.

- **Austin, United States Equity Assessment Tool for Public Services:** Piloted a tool to better allocate funding to support public services that benefit marginalized communities, allowing the public and CSOs to contribute data directly to advocate for policy priorities.

- **Bosnia and Herzegovina Transparent Criteria to Fund CSOs and Media Outlets:** Committed to establishing proactively transparent criteria to allocate public funds to support CSOs and media organizations.

- **Nigeria Co-creation and Dialogue on Civic Space:** Committed to creating new safeguards to protect the freedom of association for CSOs and the general public.

- **North Macedonia Central Register for Local CSOs:** Committed to publishing data on local CSOs in an open data format in a central register, such as information on an organization's founders, goals and activities, and operating status.

BEYOND OGP ACTION PLANS

- **Croatia Institutional Support and Coordination with CSOs:** Set a new standard in the Western Balkans by creating a five-year strategy to coordinate with and support civil society that led to the creation of an office for CSO cooperation and an advisory council with CSO members to discuss issues. Also created a foundation for civil society to provide institutional funding. Currently working on a new five-year strategy.

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.

- Article 19
- Carnegie Endowment for International Peace
- CIVICUS
- Community of Democracies
- European Center for Not-for-Profit Law (ECNL)
- Freedom House
- Hivos
- International Center for Not-for-Profit Law (ICNL)
- Organisation for Economic Co-operation and Development (OECD)
- Oxfam International
- Publish What You Pay (PWYP)

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 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.

- The **Organisation for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights** and the **Venice Commission** have issued comprehensive guidelines on the freedom of association.

- 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** updated its handbook on how to use EU law to protect the rights of assembly, association, and expression in 2023.

- The Global Standard for CSO Accountability, created by several organizations and led by **Accountable Now** as the secretariat, provides extensive guidance materials on the 12 Accountability Commitments for CSOs to follow. The goal of the Global Standard is to set good accountability practices for CSOs.

- The **International Aid Transparency Initiative** created a standard to provide guidance on the data that organizations should publish about their international aid activities, including the format of such data. The standard includes guidance on development cooperation activities and the organizations involved in any stage of a development cooperation project (including CSOs).

- The **Financial Action Task Force** recommendations related to money laundering (specifically Recommendation 8) include guidance on creating protocols to combat this form of corruption while also protecting the right of non-profits to operate. FATF also drafted a set of best practices to combat terrorism financing by non-profit organizations.