

The Open Gov Guide

2024

Open
Government
Partnership



Freedom of Expression and Media Freedom

Human rights defenders and journalists play an important role in defending people's rights, holding governments to account, and communicating to the public about government actions. Freedom of expression and media freedom enable these actors to serve as interpreters and intermediaries, connecting public institutions, decision makers, and the public. Yet government crackdowns and violence [targeting](#) defenders and journalists do more than threaten individuals; when they are silenced, corruption and other issues remain hidden.

Open Gov Challenge

Media Freedom

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 Media Freedom.

Challenge prompt: Develop or reinforce legal frameworks that protect the rights of journalists and independent media.

Actions and reforms could include:

- Removing criminal defamation, libel, and other penalties for reporting and tackling the use of SLAPPs (Strategic Lawsuits Against Public Participation) to silence journalists.
- Creating supportive environments for revenue generation and mechanisms that allow for independent and public-funded media platforms and avoid the concentration of media ownership.

Key Terms

- **Freedom of expression:** According to the international organization [Article 19](#), “Freedom of expression is the freedom for us all to express ourselves. It is the right to speak, to be heard, and to participate in political, artistic, and social life.” Though often used interchangeably with “free speech,” “freedom of speech,” and similar terms, this chapter will use “freedom of expression” in line with its use in international human rights law. [Though the right of access to information held by or on behalf of public bodies (also “freedom of information” or the “right to information”) is considered part of the right to freedom of expression and foundational to media freedom, it is [reviewed separately](#) in the *Open Gov Guide*.]
- **Human rights defender:** This term is [used to describe](#) people who, individually or with others, act to promote or protect human rights in a peaceful manner.
- **Media freedom:** Media freedom refers to the ability of journalists and other media workers to [report freely](#) on matters of public interest as a principle within the freedom of expression.

The Evidence

The [evidence](#) shows that protecting freedom of expression and media freedom 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 Institute and The B Team shows.
- Human rights defenders and journalists [have exposed](#) corruption by [uncovering bribery](#) and helping governments [recover](#) stolen assets.
- Protecting the freedom of expression improves trust in government, as case studies of [29 European countries](#) and [Indonesia](#) suggest.
- Free expression and media freedom have been shown to encourage political participation and stability by helping disseminate [different points of view](#).
- A free press is associated with increased literacy, as shown through an [analysis](#) of UNESCO data in democratic African countries.

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.

PROTECTIONS

- Create national-level plans to protect media workers:** Create a [National Action Plan on the Safety of Journalists](#) and a [National Journalist Safety Mechanism](#) through an inclusive, multi-stakeholder process. This can include safety measures such as a hotline for journalists to report threats to their safety.
- Consult marginalized groups to create protections:** Engage organizations representing women and other minorities in crafting solutions to harassment and violence.
- Create protections for those under threat of violence:** Create specific safety mechanisms for individuals and groups under threat of violence, especially women, activists, and LGBTQIA+ media actors. This may include enhanced protection and, where necessary, temporary relocation.

Civic Participation

Legislature

Intermediate

Civic Participation

Executive

Legislature

Inclusion

Intermediate

Civic Participation

Legislature

Inclusion

Advanced

FREEDOM OF EXPRESSION AND MEDIA FREEDOM

- Create early-warning and emergency support mechanisms:** Create or strengthen a system to provide rapid early-warning and emergency support to activists, including security, relocation, travel, work, and family assistance. This includes adopting legislation or creating executive orders to address gaps in the legal framework that might prevent an effective, timely response.

Civic Participation

Legislature

Advanced

- Creating legal [pathways](#) that can quickly provide refuge to activists at risk of persecution, such as emergency visas. The [Czech Republic](#) can serve as an example for how to publish emergency visas quickly, especially in collaboration with civil society.

Civic Participation

Legislature

Foundational

- Strengthen content and defamation laws to support free expression:** Assess and revise rules and laws on content and defamation (such as libel laws) in consultation with media and civil society.

- Remove criminal defamation from the code, consistent with international consensus.
- Ensure that any limits to freedom of expression to pursue legitimate aims are legal and proportionate, such as countering online harassment and hate speech.

- Create protections against retaliatory lawsuits:** Create or strengthen legislation to prevent strategic lawsuits against public participation (SLAPPs), which are used to silence journalists and human rights defenders. Examples of anti-SLAPP measures are as follows.

Civic Participation

Legislature

Intermediate

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

- Co-create laws on media ownership:** 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 on the independence of state-funded media, political party ownership of media, media ownership transparency, and transparency of state advertising in media outlets.

Civic Participation

Legislature

Advanced

CAPACITY BUILDING

- Train public officials:** Establish training programs on respecting and protecting expression for public officials, including [judicial officers](#) and [prosecutors](#). All public officials in state authorities responsible for interacting with journalists should participate.

Civic Participation

Executive

Intermediate

- Include training on the rights of journalists and other media workers to cover [protests and other assemblies](#), especially for security forces.

FREEDOM OF EXPRESSION AND MEDIA FREEDOM

- Provide safety training for CSOs and media workers:** Establish training programs on physical, digital, and psychological safety for CSOs and media workers.
 - Create tailored training programs for vulnerable groups who work in CSOs or in media, such as women and LGBTQIA+ individuals.
- Provide legal counsel and rights training for CSOs and media workers:** Ensure CSOs and media workers know their rights and obligations under the law, and facilitate access to counsel, including sound legal and accounting advice.
 - Educate and engage broader civil society about their obligations to publicly defend activists and journalists, including online.
- Allocate public funding:** Explore options for financial support to the media, such as establishing a national fund for public interest media. This should include safeguards to ensure that political interest cannot influence funding allocations.

Civic Participation
Executive Inclusion
Intermediate

Civic Participation
Executive
Advanced

Civic Participation
Legislature
Intermediate

DATA

- Mandate the collection and publication of data on violence:** Mandate an agency to collect, publish, and communicate official open data on killings, harassment, and other forms of violence against media workers and human rights defenders. This reporting should also be submitted to public oversight by the legislature with adequate privacy protections, especially where threats include sexual assault.
 - Data should be disaggregated along lines of socio-economic status, sex, gender, and other identifying markers to better understand how threats may disproportionately affect certain groups.

Transparency
Legislature
Inclusion
Advanced

SANCTIONS

- Update criminal statutes:** Remove any statutes of limitations to investigate crimes against the freedom of expression and establish [targeted sanctions](#) for crimes against media workers and human rights defenders.
- Investigate and prosecute cases of violence and harassment:** Investigate and prosecute violence and [harassment](#) against media workers and other civil society actors to ensure access to justice and end impunity.
- Create a mechanism to compensate victims:** Establish a mechanism to provide adequate levels of compensation for victims of crimes against activists and media workers.

Public Accountability
Legislature Foundational

Public Accountability
Intermediate

Public Accountability
Legislature
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. A small number of OGP countries with problems in freedom of expression have undertaken commitments in this area, speaking to the need for greater focus on protecting this right.

- **Colombia Open Data Archive on Past Conflict:** [Created](#) a national archive on the victims of its armed conflict, with 240,000 documents [made public](#) in an open data format by the second year.
- **Croatia Media Regulations to Protect Journalists:** [Committed](#) to reforming the framework to regulate the media, improve transparency, protect journalists, and prevent the publication of fake news.
- **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.

BEYOND OGP ACTION PLANS

- **Czech Republic Emergency Safe Refuge Visas:** [Provided](#) over 800 visas to human rights defenders and journalists from February 2022–2023, collaborating with CSOs to process some visa applications as quickly as 72 hours.
- **Sierra Leone National Framework for the Safety of Journalists:** [Passed](#) a [national framework](#) for the safety of journalists, developed in coordination with media workers.
- **United Kingdom Protections against SLAPPs:** [Published](#) and responded to a Call for Evidence on [SLAPPs](#), and committed to introducing legislation to address this threat to free expression and media freedom, including an early dismissal process and cost protections for defendants.

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](#)
- [Article 19](#)
- [Balkan Investigative Reporting Network \(BIRN\)](#)
- [CIVICUS](#)
- [Committee to Protect Journalists \(CPJ\)](#)
- [Community of Democracies](#)
- [European Center for Not-for-Profit Law \(ECNL\)](#)
- [Freedom House](#)
- [Hivos](#)
- [IFEX](#)
- [International Center for Not-for-Profit Law \(ICNL\)](#)
- [Internews](#)
- [Media Freedom Coalition](#)
- [Organisation for Economic Co-operation and Development \(OECD\)](#)
- [Reporters Without Borders \(RSF\)](#)
- [Varieties of Democracy \(V-DEM\)](#)
- [Web Foundation](#)

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 OGP Support Unit also provides a set of [recommendations](#) on how to engage the media in open government planning.
- The **Media Freedom Coalition** (MFC) is a partnership made up of member states that work with civil society actors, legal experts, and international bodies like the UN Educational, Scientific, and Cultural Organization (UNESCO). The High Level Panel of Legal Experts on Media Freedom is the independent advisory body to the Coalition. The High Level Panel has [produced](#) a series of enforcement reports and recommendations for MFC member states that focus on improving international mechanisms to enforce international human rights norms for the safety of journalists and the protection of media freedom.
- 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.
- **Article 19's** [Law and Policy](#) webpage houses an extensive collection of their toolkits, recommendations, and analysis related to free expression threats worldwide.
- **CPJ** provides [guidance](#) on digital safety kits for journalists, physical safety resources, and information related to detention and arrest.
- **IFEX** has published several types of guidance to navigate and understand how the UN system can be used to protect the freedom of expression and media freedom. Resources explain how [special procedures](#) work, how the UN [monitors](#) resolutions on the safety of journalists (including the [UN Plan of Action on the Safety of Journalists](#)), and how UNESCO [reports](#) on issues of safety and impunity related to journalists.
- 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.
- **UNESCO** released [recommendations](#) to expand lessons learned from protecting journalists to other voices threatened by violence, such as artists living in emergency situations. It also has extensive training materials on training public officials on these rights. This includes guidelines for [judges](#), [prosecutors](#), and [security forces](#).
- The **UN Special Rapporteur on Freedom of Opinion and Expression** [published](#) a report on protecting the right to free expression in emergency contexts, in light of the crackdowns that followed the spread of COVID-19.