The Open Gov Guide

2024

Open
Government
Partnership

Justice

Justice for Accountability

Justice for accountability means that people and organizations can bring complaints to judiciaries, tribunals, and other forms of dispute resolution when the law is not being followed. Governments can reduce barriers around who can bring a claim to court, high costs, and a lack of information on how to pursue legal solutions. This can enable members of the public to help uphold the law.

Open Gov Challenge
Justice

With OGP's 2023-2028 Strategy, OGP members are set to work toward a number of aspirational thematic "Partnership-wide Challenges." This section of the *Open Gov Guide* addresses Justice.

Challenge prompt: Advance people-centered justice reforms.

Actions may include:

- Ensuring that everyone has access to legal services.

- Ensuring that justice institutions across the public sector are independent, transparent, responsive to the public, and inclusive.

- Ensuring that there is accountability for policy-making through appropriate redress mechanisms that involve the public.

Key Terms

- **Public accountability:** Public accountability is when rules, regulations, and mechanisms in place call upon government actors to justify their actions, act upon criticisms or requirements made of them, and accept responsibility for failure to perform with respect to laws or commitments. Public accountability is one of the three OGP values, along with transparency and civic participation.

The Evidence

Justice for accountability can improve governance in several ways.

- Open and effective auditing and investigatory agencies can prevent and punish waste, fraud, and abuse in government spending and ensure that taxation is fair and transparent.

- Oversight mechanisms within accountability institutions (like courts and information commissions) allow citizens to appeal rejected or mishandled right to information requests, which ensures that information is not withheld from the public for political reasons.

- Accountable electoral management can ensure that elections are free and fair by investigating irregularities and allegations of denied voting rights.

- Institutions that allow citizens to monitor policies, programs, and plans that affect the environment can prevent pollution, environmental degradation, and the worst effects of climate change.

- Accountability institutions also provide a mechanism for members of the public to protect their most fundamental rights, especially those from socially vulnerable groups, such as people with disabilities.

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.

LOWERING LEGAL AND PRACTICAL BARRIERS

☐ **Establish legal standing to address legal barriers:** Establish public interest legal standing, possibilities for citizen enforcement of the law, or amicus procedures. In many jurisdictions, limitations on who can bring a claim before accountability institutions can be a barrier to delivering justice.

`Public Accountability` `Legislature` `Foundational`

  ☐ For example, in some countries, whistleblowers may enforce an environmental law on behalf of the state or government or may bring fraud cases as part of whistleblower compliance actions. For a case study of how to create such protections, Transparency International Latvia and the government worked to update whistleblower protections through an OGP action plan.

☐ **Create and enforce laws to lower cost barriers:** Create and enforce laws to lower costs (economic or otherwise) of accessing accountability. The following examples address issues that have long been cited as a barrier to individuals seeking to bring a grievance to court.

`Public Accountability` `Executive` `Legislature` `Intermediate`

  ☐ Introduce legal funds to support public interest work.
  ☐ Establish rewards for citizen enforcement of a law.
  ☐ Waive court costs in cases of established public interest standing or citizen enforcement.
  ☐ Ensure that costs are not unduly borne by those bringing public interest or citizen suit actions.

ACCESSIBLE COMMUNICATION

☐ **Communicate procedures for complaints clearly:** Ensure that institutions handling all types of complaints communicate all procedures in an understandable and accessible way.

    ☐ Translate legislation, policies, judicial decisions and precedent, and legal procedures related to particularly complex topics (such as public finance and climate change litigation) into plain language. For example, through an OGP action plan, courts in Buenos Aires (Argentina) have pioneered work on using plain language.

    ☐ Provide reasonable accommodation for persons with disabilities, such as translating documents into braille and sign language and using clear, non-technical language in legal documents.

`Transparency` `Public Accountability` `Executive` `Legislature` `Intermediate`

REPORTING MECHANISMS

☐ **Create internal reporting mechanisms:** Create or maintain integrity tools such as whistleblower protections, gift registers, and registers of actual or perceived conflicts of interest for accountability institution officials.

`Public Accountability` `Executive` `Legislature` `Intermediate`

☐ **Require reporting to the legislature:** Require regular public reporting or ad hoc reporting on the performance of relevant legislation related to these internal reporting mechanisms.

`Public Accountability` `Legislature` `Intermediate`

RESOURCES AND TRAINING

☐ **Increase resources and training:** Encourage government officials, civil society, journalists, and others to use accountability mechanisms in some areas, especially right to information appeals. To do so, ensure there is sufficient technical or procedural knowledge to successfully file appeals (especially for civil society) and sufficient funding to support the functioning of accountability mechanisms.

    ☐ Tailor resource allocation and training for advocates working with marginalized groups who face additional barriers (such as economic and linguistic barriers) to seeking justice through the formal channels of the legal system.

`Public Accountability` `Executive` `Inclusion` `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. To date, relatively few OGP commitments focus on creating or reforming accountability mechanisms. Less than 20 percent of OGP commitments focus on ensuring some means of accountability for government action or inaction.

- **Argentina Civil Society Participation in Audits:** Hosted workshops and consultations between the Office of the National Auditor General and civil society on audit design, and committed to working with civil society to further strengthen citizen monitoring.

- **Peru Online Platform to Monitor Public Works:** Strengthened participation in infrastructure monitoring through a platform that consolidated data on financial administration, public investments, and state contracting and allowed the public to oversee and flag issues in planning and executing public works projects.

- **Philippines Citizen Participatory Audits for Public Services:** Created Citizen Participatory Audits to monitor government spending on public services, which led to tangible improvements like increasing the quality of textbooks and building infrastructure in Metro Manila public schools.

- **Ireland Justice for Individuals with Limited Decision-Making Capacity:** Created the Decision Support Service to expand decision-making support options for people with "impaired mental capacity," launched a website to provide accessible information, and committed to allocate EUR 3 million for its operation.

BEYOND OGP ACTION PLANS

- **Uganda Tax Appeal Tribunals:** Created Tax Appeal Tribunals to allow the public to access a process for independent and impartial taxi dispute resolution.

The Role of Local Governments

Local governments play a special role in ensuring that the public can use accountability institutions to enforce the law and protect their rights.

- **Harms and standing:** Local legislatures, in particular, may design laws to ensure that people have standing and clear means of redress and remedy when their rights have been violated.
- **Cost:** Courts and legislatures may establish funds, provide pro bono services, reduce court costs, or establish other means of lowering the costs to those who are enforcing the law.
- **Specialized fora, ombudsperson, and alternative dispute resolution:** Local governments may establish or enhance specialized tribunals (such as environmental courts or access to information commissions) that can hear allegations of violations. In addition to courts, they may also establish other means of complaints including grievance mechanisms, ombudsperson offices, or alternative dispute resolution.
- **Legal assistance:** Many local jurisdictions, perhaps in cooperation with local bar associations or other professional associations, may help establish standards, procedures, and financing mechanisms to ensure that classes of people and individuals needing additional assistance receive appropriate assistance throughout a legal proceeding.

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.

- International Foundation for Electoral Systems (IFES)
- Institute for Governance and Policy Studies at Victoria University of Wellington
- International Budget Partnership and the Global Initiative for Fiscal Transparency
- United Nations Economic Commission for Latin America and the Caribbean (UNECLAC)
- World Resources Institute (WRI)
  - The Access Initiative is part of WRI.

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 **World Justice Project**'s Rule of Law Index analyzes different dimensions of governance in 140 countries and jurisdictions, with specific indicators related to access to civil and criminal justice.

- 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.

- The **OGP Support Unit**, along with the partners above and other experts, published a policy series on justice for accountability, *Accountability for Democratic Renewal*. This paper contains six chapters that describe how OGP members can strengthen and improve access to citizen-activated accountability mechanisms in response to a different type of problem or harm. The chapters respectively focus on:
  - right to information mechanisms,
  - anti-corruption enforcement,
  - environmental justice,
  - electoral dispute resolution,
  - tax and fiscal policy, and
  - rights of people with disabilities.

- **IFES** has published several resources related to election dispute resolution. Two examples of these resources are *Risk-Limiting Audits: A Guide for Global Use* and *Alternative Dispute Resolution in Elections: A Practitioner Brief*. IFES also curates the Election Judgments database, which collects global data on judicial decisions related to election law.

- The **UN Economic Commission for Europe** published a second edition implementation guide for the Aarhus Convention in 2014 to update its guidance from the original version published in 2000. The guide provides an overview of Aarhus and an analysis of each article of the convention.

- Similarly, **UNECLAC** published an implementation guide on the Escazú Agreement to raise awareness about the agreement and to provide guidance to ensure full compliance with its provisions.

- The **UN Office of the High Commission on Human Rights** published principles and guidelines to address the need for protections for people with disabilities. The guidelines provide details on the rights of individuals and the obligations of governments in this area, as well as general good practices to guarantee access to justice for this group of people.

- The **International Organization of Supreme Audit Institutions** has a Framework of Professional Pronouncements, which sets standards for public auditing based on the expertise of the organization's membership. These standards include core principles of auditing and organizational requirements for audit institutions.

- **Environmental Law Alliance Worldwide** (ELAW) has published several guidance publications, such as a guide on environmental sampling and one on evaluating environmental impact assessments for mining projects. ELAW also provides litigation strategies related to climate and coal, and maintains a global database of environmental impact assessment laws.