2 Facilitating citizen and stakeholder participation through the protection of civic freedoms

This chapter provides an overview of the status of freedom of expression, peaceful assembly, association and the right to privacy as cornerstones of democratic life. It discusses related legal protections and exceptions to the full enjoyment of these rights, followed by a review of implementation trends, challenges and opportunities, including in the context of COVID-19. It examines discrimination as an obstacle to equal participation in public policy making. It reviews legal frameworks and practices protecting human rights defenders. Finally, it examines the types of mechanisms that exist to counter violations of civic freedoms, including oversight and complaints bodies and the role of public communication in promoting civic space.

Key findings

- Civic freedoms are generally well protected by legal frameworks in OECD Members and non-Members that participated in the OECD Survey on Open Government. Freedom of expression is a right for anyone present in a country, including irregularly, in 96% of respondents, freedom of peaceful assembly in 88%, freedom of association in 82% and the right to privacy in 98% of respondents.
- While most legal exceptions to these rights in OECD Members are in line with international standards, some would benefit from further review to ensure that they do not restrict civic freedoms.
- In a context of growing anti-government protests, most surveyed OECD Members permit and facilitate peaceful assembly. But insufficient protection of protestors by law enforcement actors, as well as police violence used against protestors in some contexts, have raised concerns about respecting this right. Court decisions and legal changes have been introduced in some OECD Members to reduce and control the use of force by police during protests.
- Despite solid legal frameworks for civic space protection, civic freedoms that underpin democratic life are under pressure in some OECD Members. External data show that the majority (83%) of OECD Members are considered “open” in relation to freedom of expression for example, while 17% of OECD Members are not (Article 19, 2021[1]).
- Strong legal frameworks countering discrimination help to enable effective and equal participation and these are supported by affirmative action to support disadvantaged groups, found in 91% of OECD Members and 84% of all respondents. There is an overwhelming trend in OECD Members to prohibit hate speech (97% of respondent OECD Members, 90% of all respondents) as a widely recognised form of discrimination. Almost half of all respondents (46% of OECD Members, 49% of all respondents) have separate institutions that specialise in discrimination cases and in promoting equality.
- Strong oversight mechanisms are helping to protect civic space. A majority of respondents (84% of OECD Members, 90% of all respondents) have independent public institutions that address human rights complaints. However, basic disaggregation of data (e.g. by age or gender) by these institutions remains rare, hindering the development of prevention and response initiatives targeting affected groups.
- Over one-third of OECD Members are leading the way by ending emergency measures that were introduced in the aftermath of the COVID-19 pandemic and that affected civic space. As of March 2022, 11 OECD Members were under states of emergency, either due to the pandemic (8 OECD Members) or new emergency measures introduced as a result of the invasion of Ukraine (3 OECD Members).
- All respondents would benefit from an ongoing review of the manner in which legal frameworks governing civic freedoms are implemented at the national level, as part of measures to reinforce their democracies. Ongoing monitoring of civic space using disaggregated data to understand emerging challenges and gaps, and cross-government efforts to identify and reverse any negative trends, would also be beneficial.

2.1. The cornerstones of civic space: Legal frameworks governing freedoms of expression, association, peaceful assembly and the right to privacy

Freedoms of expression, association, peaceful assembly and the right to privacy are fundamental civic freedoms that enable effective civic participation.[1] These basic rights are an essential precondition for the good governance and development of any democratic society. They are also necessary to ensure the empowerment and well-being of non-governmental actors.

The protection of civic space requires that all people are able to freely express themselves in public, including to critique government decisions, actions, laws and policies, and to hold government actors to account without fear of repercussions. Freedom of peaceful assembly affirms the right of citizens and non-governmental stakeholders to come together to advance their common interests, including their legitimate right to exercise dissent through peaceful protest and public meetings. Similarly, freedom of association guarantees the right of individuals to form, join and participate in associations, groups, movements, and civil society organisations (CSOs), thereby fulfilling people's fundamental desire to defend their collective interests. Finally, the state's duty to protect citizens and stakeholders from abuses of their right to privacy is another prerequisite for a vibrant civic space, as it helps to create the conditions for people to inform, express and organise themselves without undue interference.

The laws, policies and institutions that countries have in place are essential in establishing and protecting civic space. Legal and regulatory frameworks play a critical role in determining the extent to which all members of society, both as individuals and as part of informal or organised groups, are able to freely and effectively exercise their basic civic freedoms, participate in policy and political processes, and contribute to decisions that affect their lives without discrimination or fear.

An analysis of the data from the 2020 OECD Survey on Open Government (Annex A) shows that all 51 respondents to the civic space section of the Survey protect fundamental civic freedoms in national legal frameworks, case law (of higher courts) or by direct application of international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR) and the American Convention on Human Rights (ACHR). Some of the legally mandated exceptions or conditions to these rights would benefit, however, from further review and revisions to ensure their full compliance with international human rights standards, which are agreed-upon global standards that form the bedrock of democratic societies.

All survey data presented in this chapter pertain to the respondents to the civic space section (32 OECD Members and 19 non-Members) of the 2020 OECD Survey on Open Government (hereafter "the Survey"), except where explicitly stated (e.g. Figures 2.8 and 2.10).

With respect to the question of who may exercise the above-mentioned rights, relevant international human rights instruments do not distinguish between legally recognised citizens and non-citizens.[2] However, in some countries, national legal frameworks do distinguish between the two categories, affording fewer rights to those who are not legally recognised.[3] For example, Figure 2.1 on legal entitlement to civic freedoms shows that in 96% of respondents, including 100% of OECD Members, relevant legal provisions specify that anyone (meaning anyone physically present in a country, even irregularly) has the right to freedom of expression.

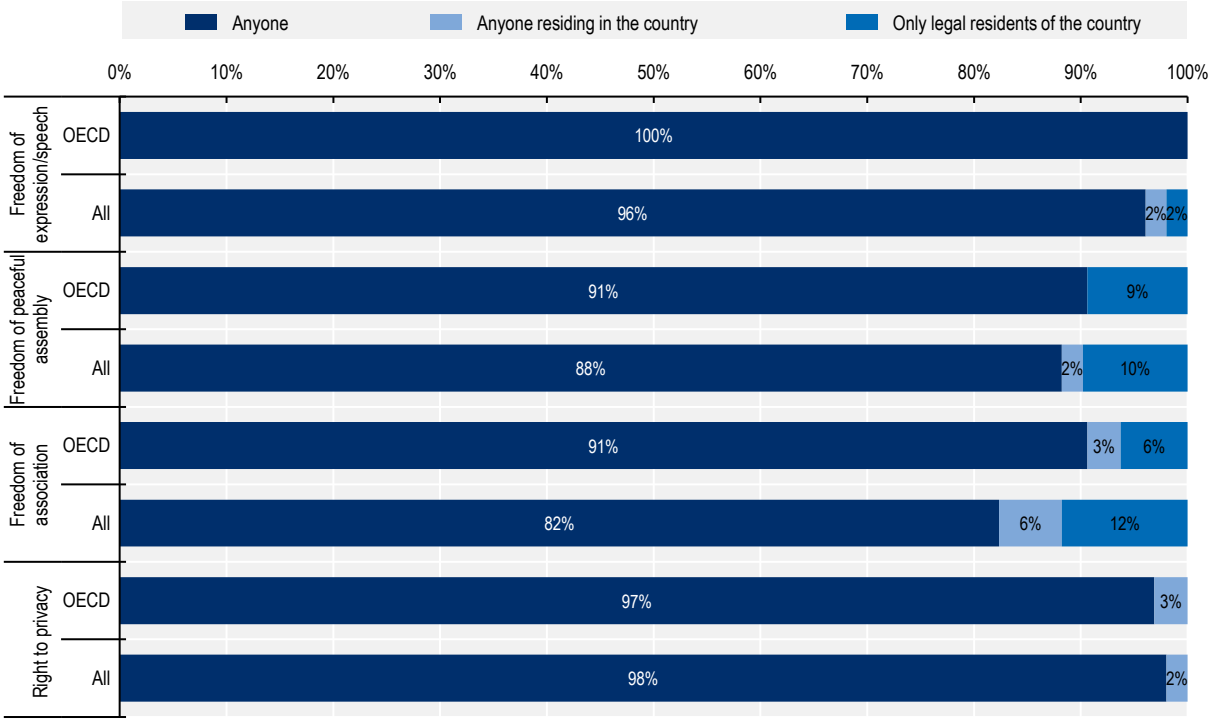
Similarly, 88% of all respondents, including 91% of OECD Members, grant the right to freedom of peaceful assembly to anyone, while **Italy**, for example, provides this right only to legally recognised citizens, **Lithuania** provides this right only to legally recognised citizens, European Union citizens, and foreign nationals with permanent residence in the country. **Panama** grants this right only to residents of the country. In **Mexico**, the right to freedom of peaceful assembly is only granted to legally recognised citizens where assemblies relate to the political affairs of the country.

In terms of the right to freedom of association, 82% of all respondents, including 91% of OECD Members, grant this right to anyone. While **Costa Rica, Lebanon, Panama** and **Portugal** grant this right to persons residing in the country, **Cameroon**, **Italy**, **Kazakhstan** and **Romania** only grant it to persons residing legally in the country. In **Mexico**, the right to freedom of association is only granted to legally recognised citizens for associations that focus on political affairs.

The right to privacy is likewise granted to anyone in 98% of all respondents and in 97% of OECD Members. In **Costa Rica**, the constitution grants the right to private life to anyone but indicates that certain aspects of this right, such as protection of privacy in the home (meaning that nobody may enter without permission, damage or destroy someone's home) and the inviolability of documents may only apply to persons residing in the country. In **Canada**, the Charter of Rights and Freedoms only protects individuals against search and seizure, but Canadian courts have applied the right to privacy broadly in all relevant cases, supported by privacy legislation at the federal and provincial levels.

Figure 2.1. Legal entitlement to civic freedoms in all respondents, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (32 OECD Members and 19 non-Members). Data on Canada, Guatemala and Slovenia are based on OECD desk research and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

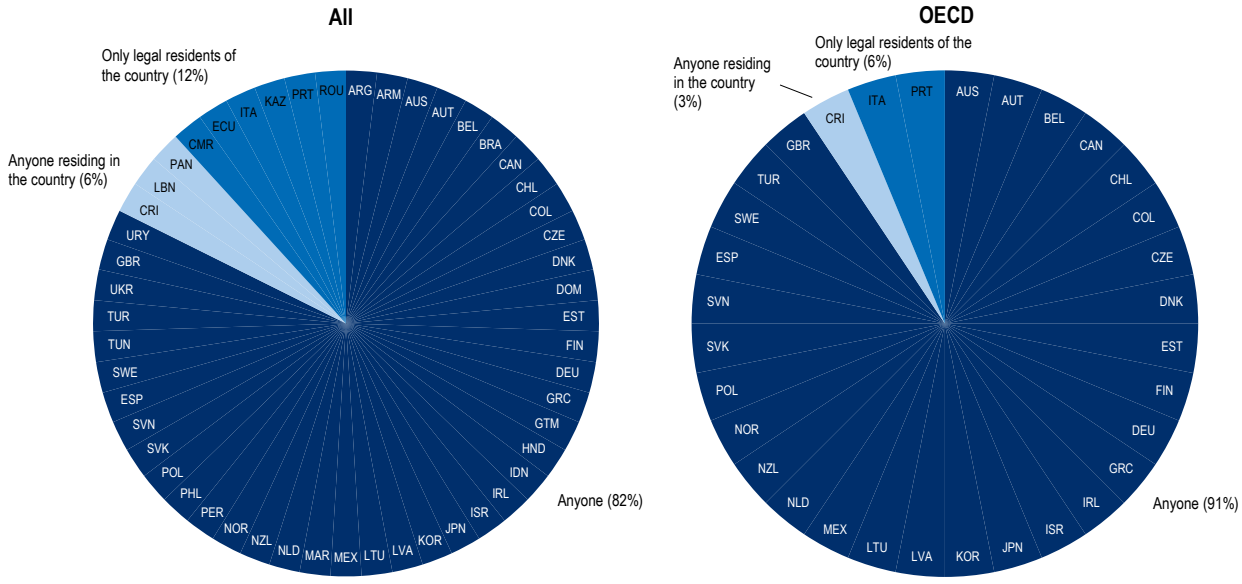
StatLink https://stat.link/szfqre

Of all the above rights, entitlement to freedom of association is the most limited with 18% of respondents granting freedom of association only to residents or legal residents (Figure 2.2). Some respondents, including **Cameroon, Costa Rica, Kazakhstan** and **Romania**, limit the general exercise of freedom of association. Others, including **Italy, Portugal** and the **Slovak Republic**, limit the right to found associations. In the **Czech Republic** and **Finland**, legislation prohibits certain public officials from joining

associations and only legally recognised citizens or foreigners residing in Finland may join associations "if the purpose of the association is to exercise influence over state affairs" (Finnish Associations Act, 1989[2]).

Figure 2.2. Legal entitlement to freedom of association, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (32 OECD Members and 19 non-Members).
Source: 2020 OECD Survey on Open Government.

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> ***Key measures to consider on legal frameworks protecting civic freedoms***
>
> *Expanding key civic freedoms to non-nationals, including stateless persons, refugees and migrants, would lead to greater compliance with existing international human rights guidance and would ensure that these groups of persons do not suffer discrimination with respect to the exercise of fundamental civic freedoms based on their status.*

2.1.1. Freedom of expression

The right to freedom of expression constitutes the foundation of every free and democratic state (UN, 2011[3]; European Court of Human RIghts, 1976[4]; IACHR, 1985[5]) and is one of the main prerequisites for an enabling environment for civil society. This covers the right to hold opinions without interference, as well as the freedom to seek, receive and impart information and ideas of all kinds, orally, in writing or in print.[4] Based on international human rights instruments, this right may be restricted where the restrictions are based on law and where it is necessary out of respect for the rights or reputations of others, for the protection of national security or of public order, or for public health or morals.[5] The advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and certain forms of hate speech are likewise prohibited in international human rights instruments.[6]

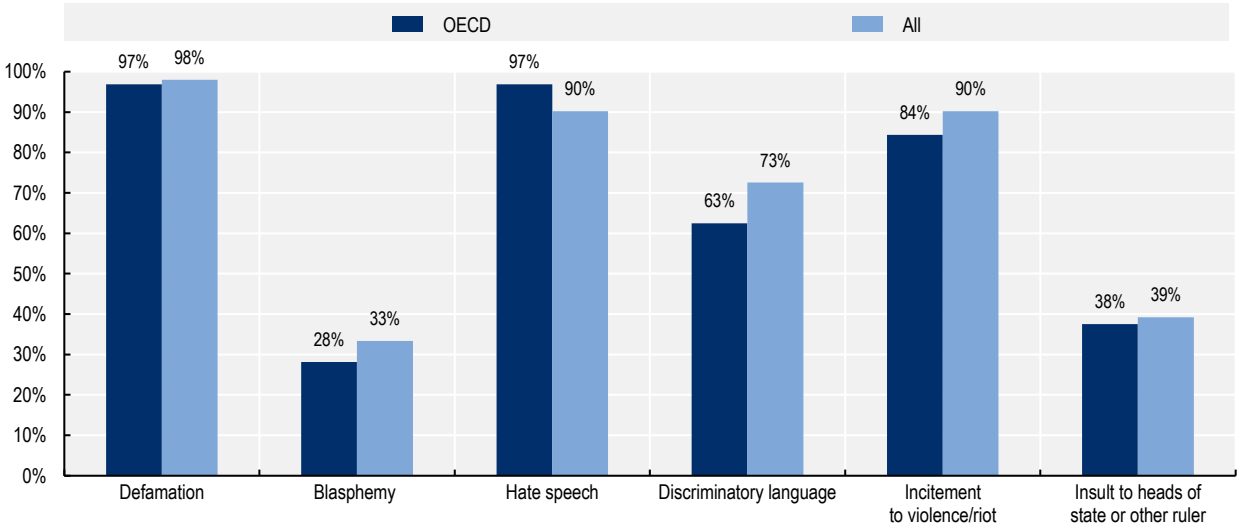
Legally mandated exceptions and conditions

Limitations on the right to freedom of expression may entail a wide variety of measures.[7] At the same time, restrictions must not jeopardise the right itself, according to guidance from the United Nations (UN) Human Rights Committee (UN, 2011[3]). In particular, freedom of expression is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference but also to those that offend, shock or disturb the state or any sector of the population (European Court of Human RIghts, 1976[4]; IACHR, 2009[6]).

There are several exceptions to freedom of expression that are common across respondents, including defamation, hate speech, incitement to violence and discriminatory language (Figure 2.3).

Figure 2.3. Legally mandated exceptions to freedom of expression, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (32 OECD Members and 19 non-Members). Data on Armenia, Chile, Guatemala, Honduras, Ireland, Netherland, Peru and Slovenia are based on OECD desk research for at least one category and were shared with them for validation. The data only include laws on national/federal level, countries with laws on state or regional level have been categorised as not having a particular exception. While laws in Belgium, Brazil and Colombia criminalise a lack of respect towards representatives or members of a religion, the countries maintained that such acts were different from blasphemy because these laws criminalise offending people associated with a religion, not the religion or God itself. For this reason, these countries were not included in in the category for blasphemy.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/sw6pc1

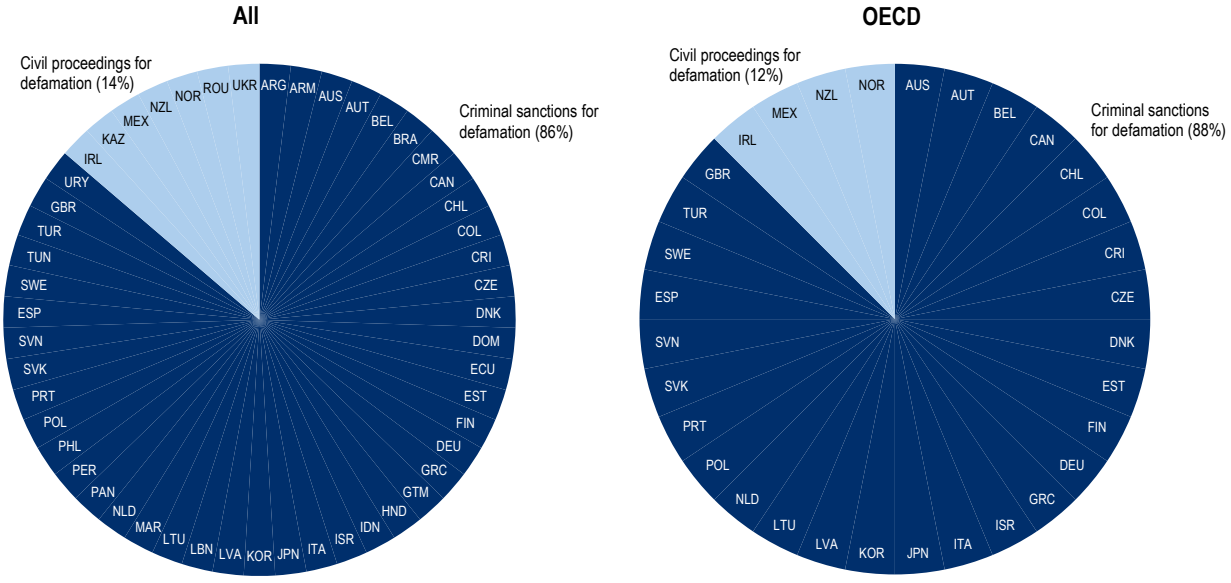
Defamation

Defamation, defined for the purposes of this report as a false statement, made in any medium (written or orally), which is presented as a fact and which causes injury or damage to the character of the person it is about, is a legally mandated exception to freedom of expression in 98% of all respondents, including 97% of respondent OECD Members (Figure 2.3). While in the majority of respondents a claim must generally be false to constitute defamation, in some respondents, including **Japan** and **Korea**, the law does not specify that a statement needs to be false to fulfil the legal requirements of defamation. Figure 2.4 illustrates that while 86% of all respondents have special provisions prohibiting all or certain forms of defamation in their criminal codes, 14% of all respondents, including **Mexico, New Zealand** and **Norway**

(OECD Members), and **Guatemala**, **Kazakhstan**, **Romania** and **Ukraine** (non-Members) foresee non-criminal remedies for defamation, such as civil lawsuits leading to damages.

Figure 2.4. Criminal and civil proceedings for defamation, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (32 OECD Members and 19 non-Members). Data on Ireland and Poland are based on OECD desk research and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

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Defamation laws generally aim to protect the reputation of individuals from false or offensive statements and are a balancing exercise between freedom of speech on the one hand and protecting personal reputations on the other. While the protection of a person's reputation may serve a legitimate interest, criminal sanctions can be viewed as having a greater potential to lead to limitations on civic space, such as censorship and self-censorship, compared with civil remedies, especially when criminal sanctions include prison sentences (UN, 2011[3]; Griffen, 2017[7]). If sanctions are overly broad, there is also a risk of them being abused, including by stifling information and legitimate reporting on matters of public interest. The European Court of Human Rights and the Inter-American Court of Human Rights (IACHR) have found that imposing excessively punitive sanctions, such as prison sentences in defamation cases, constitutes a disproportionate interference with individuals' freedom of expression.[8] International human rights bodies have thus called on countries to consider decriminalising defamation (CoE, 2007[8]), stressing that criminal law should only be applied in the most serious cases and that imprisonment is not an appropriate penalty (CoE, 2007[8]; UN, 2011[3]).

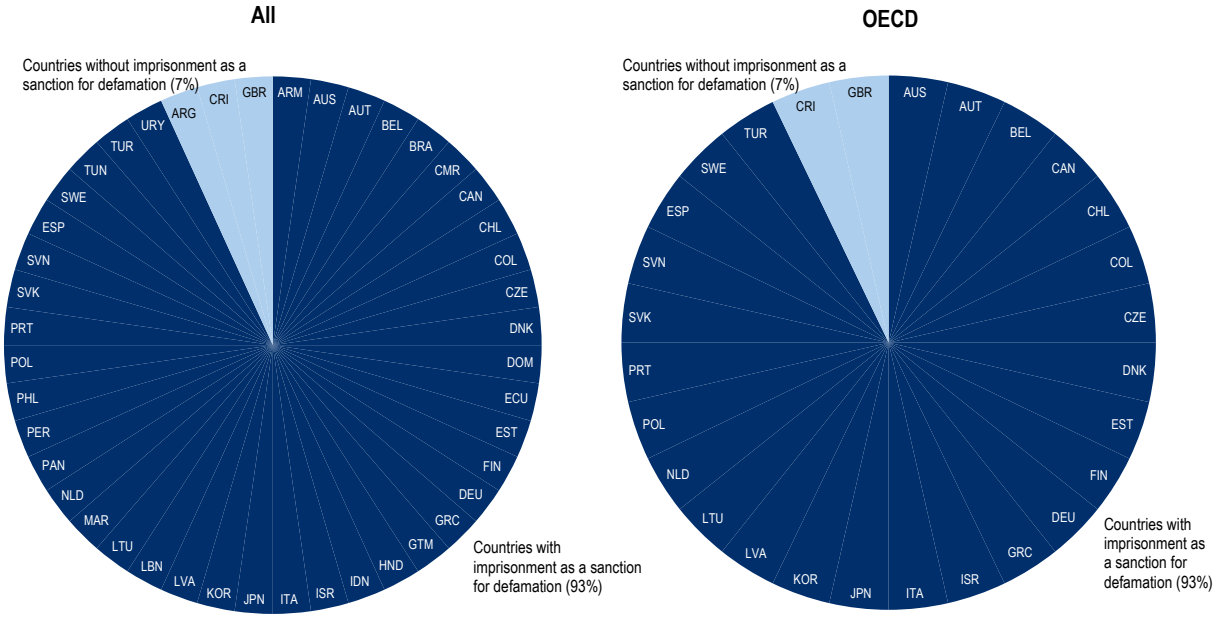
Thus, while international human rights law permits limitations on speech where necessary out of respect for the rights and reputations of others,[9] it is important that defamation laws are formulated carefully to ensure that they comply with the requirements of necessity and proportionality,[10] and that they do not serve, in practice, to stifle freedom of expression.[11] In its case law, the European Court of Human Rights has often referred to the public interest as a factor to be weighed against restrictions on freedom of expression, when considering whether a restriction is "necessary in a democratic society". In some cases, it has been ruled that prison sentences may not be imposed as a sanction for defamation in the context of

a debate on a matter of legitimate public interest (McGonagle, 2016[9]). Moreover, the court has ruled that a statement that harms or has a negative effect on the reputation of others does not amount to defamation if a sufficiently accurate and reliable factual basis proportionate to the nature and degree of the allegation can be established.[12]

Figure 2.5 illustrates that of the 44 respondents that criminalise defamation, 93% foresee prison sentences as a potential sanction. The percentage (93%) is the same for the 28 OECD Members. Prison sentences range from six months to up to two years in the **Czech Republic**, **Ecuador**, **Finland**, **Peru** and the **Republic of Türkiye** (hereafter referred to as **Türkiye**), up to three years in **Japan**, **Lebanon** and **Uruguay**, up to five years in **Canada** or even up to six years in **Indonesia**. In some respondents, committing defamation against heads of state leads to an aggravated punishment.

Figure 2.5. Imprisonment as a potential sanction for defamation, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: The graph only displays respondents that have criminal sanctions for defamation, as shown in Figure 2.4. "All" refers to 44 respondents (28 OECD Members and 16 non-Members). Data on Guatemala, Poland and Slovenia are based on OECD desk research and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/q7z4ib

Public interest as a defence in defamation cases has been introduced in defamation laws in some respondents, including in some states in **Australia** and the **United Kingdom** and **Uruguay**. These amendments aim to improve protection for journalists against defamation suits, allowing them to establish that the contents of their publication were in the public interest (Murray, 2021[10]). Public interest was also brought forward as a defence in recent court decisions in a number of OECD Members and non-Members, including **Argentina**, **Brazil** and the **United Kingdom** (Supreme Court of Argentina, 2020[11]; Sao of Brasil Court of Justice, 2016[12]; Supreme Court of the United Kingdom, 2020[13]; United Kingdom High Court of Justice, 2022[14]). In said cases, the respective courts dismissed libel or defamation claims as they found that the contents of the publications of both journalists and private persons and/or the fact that they involved people known for their involvement in public affairs were in the public interest. In the cases before UK

courts, the fact that the defendants had believed that relevant publications were in the public interest and that the defendants had behaved fairly and responsibly when publishing the information also played a role.

Moreover, the **Dominican Republic, Honduras, Lebanon**, **Lithuania, Morocco** and **Tunisia** have related provisions in their criminal codes or legislation on press, communication and information relating to the dissemination and intentional publication of false facts or news; in the cases of **Morocco** and **Tunisia**, this involves situations where there is a risk of disturbing public order or instilling fear.

Figure 2.3 illustrates that 39% of all respondents, comprising 38% of respondent OECD Members, also penalise insulting heads of state. Criminal provisions contain penalties that range from fines to prison sentences of up to six months, one year or even two years (**Spain**); three years (**Belgium** and **Portugal)**; or five years (**Germany**).

There is widespread agreement among international human rights courts and bodies that defamation laws should not offer special protection to the reputation and honour of heads of state or other rulers (CoE, 2007[8]; UN, 2011[3]; IACHR, 2000[15]). This is on the basis that, in any functioning democracy, it is important that the actions of public officials can be closely scrutinised by both journalists and the public and that the limits of acceptable criticism of public officials and politicians should be wider than for private individuals.[13] According to international guidance, the existence of such insults is, by themselves, not sufficient to justify the imposition of penalties; all public figures, including those exercising the highest political authority, are legitimately subject to criticism and political opposition. In practice, these laws are hardly implemented in OECD Members. For example, even though it remains a crime to intentionally insult monarchs or heads of state in OECD Members such as **Belgium**, **Italy**, the **Netherlands**, **Portugal** or **Spain**, there have been no prosecutions in the past decades (Venice Commission, 2016[16]).

Hate speech, discriminatory language, and incitement to violence

Figure 2.3 illustrates that 90% of all respondents and 97% of respondent OECD Members prohibit hate speech, defined for the purposes of this report as any kind of communication in speech, writing or behaviour that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are and aims to incite discrimination or violence towards that person or group, e.g. based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factors (Box 2.1 on hate speech legislation in OECD Members and Section 4.4.2 in Chapter 4). Figure 2.3 also shows that 73% of all respondents (63% of respondent OECD Members) ban discriminatory language. Further, 90% of all respondents and 84% of respondent OECD Members criminalise incitement to violence.[14] In some respondents, legislation also prohibits propaganda or agitation that threatens the constitutional system (e.g. **Australia**, **Kazakhstan**, the **Philippines**, **Türkiye**) or the dissemination of propaganda material from unconstitutional organisations (**Germany**).

Addressing hate speech remains a considerable challenge, given the need to balance a democratic society's requirement to allow open debate, freedom of expression and individual autonomy and development with the equally compelling obligation to prevent attacks on vulnerable communities and ensure equal and non-discriminatory participation of all individuals in public life (UN, 2019[17]).

A number of OECD Members have increased their efforts to combat hate speech in recent years, especially online (Section 4.4.2 in Chapter 4). At the same time, non-governmental sources have stressed that these types of laws can also constitute potential threats to civic space when definitions of hate speech are overly broad (Australian Hate Crime Network, 2020[18]; Global Network Initiative, 2021[19]; Article 19, 2020[20]).

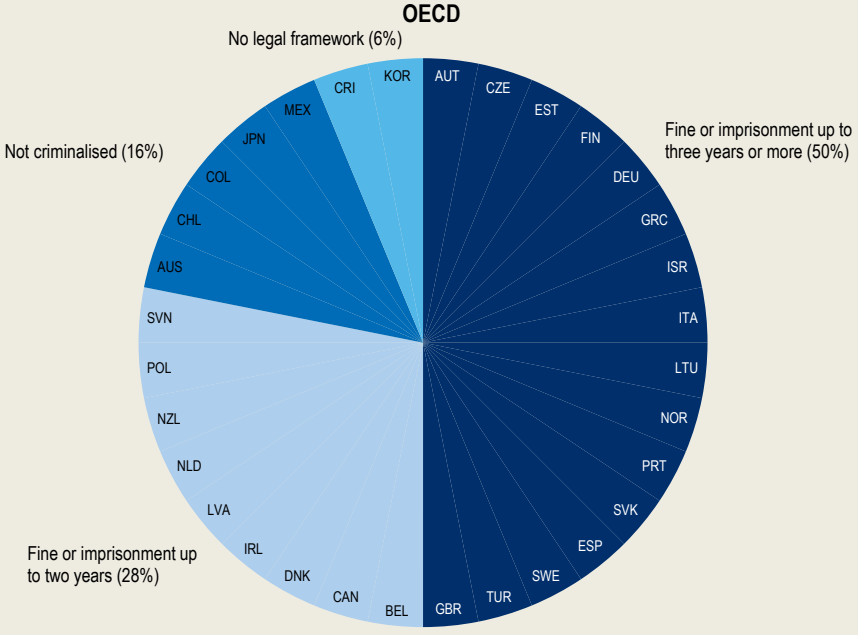
The UN Committee on the Elimination of Racial Discrimination (CERD) as well as the European Commission against Racism and Intolerance (ECRI) have emphasised that racist expression should only be criminalised in serious cases and that less serious cases should be addressed by means other than criminal law.[15] Thus, according to the CERD, speech that insults, ridicules or slanders persons, or that

justifies hatred, contempt or discrimination, may only be prohibited where it "clearly amounts to incitement to hatred or discrimination"[16] (CERD, 2013[21]; ECRI, 2015[22]; ECtHR, 2020[23]; UN, 2013[24]; 2019[17]).

Box 2.1. Hate speech legislation in OECD Members

Figure 2.6 illustrates that all OECD respondents, except **Costa Rica** and **Korea**, have a legal framework in place governing hate speech or similar actions, either explicitly or implicitly, both on and off line. The respective legal provisions are usually set out in criminal or anti-discrimination legislation. While in most cases, legislation does not mention online hate speech explicitly and rather speaks about general dissemination, which could also be off line, some OECD Members, such as **Australia, Chile, Germany, Italy** and **New Zealand**, have separate laws or regulations in place that *explicitly* address online hate speech.

Figure 2.6. Sanctions for hate speech in OECD Members, 2020



Note: The graph consists of 32 OECD Members. Data on Ireland and the United Kingdom are based on OECD desk research and were shared with them for validation. While Costa Rica has referred to Art. 13 of the American Convention on Human Rights as the legal basis for hate speech as an exception to freedom of expression, it has no national legislation on hate speech. Therefore, Costa Rica is categorised as a country with hate speech as an exception to freedom of expression in Figure 2.3 but with no relevant national legislation in Figure 2.6.
Source: Author's own elaboration based on the legal frameworks on hate speech provided by respondents to the 2020 OECD Survey on Open Government.

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Out of the 94% of respondent OECD Members that have national legislation on hate speech, 78% criminalise it, with varying sanctions. Figure 2.6 illustrates that in 28% of respondent OECD Members that have hate speech legislation in place, the punishment for such statements includes fines and imprisonment ranging from 1 month to up to 1, 1.5 or 2 years. In 50% of respondent OECD Members, the punishment is more severe and amounts to a minimum of 3, 4 or 6 months, or 1 or 4 years, and a maximum of 3, 4, 5 or even 8 years of imprisonment, including in cases where incitement is carried out via the media or otherwise published, where an organised group commits the act, or where incitement

leads to or involves violence, clearly endangers public order and safety or is otherwise of a serious nature. In **Greece**, in cases of imprisonment for at least a year, an additional legal consequence is the deprivation of a person's political rights from one to five years. **Australia, Chile, Colombia, Japan** and **Mexico** ban but do not criminalise hate speech. In **Japan**, the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behaviour against Persons Originating from Countries other than Japan focuses on awareness-raising, government measures and advice, but does not foresee any punishment for unfair discriminatory speech. In **Türkiye**, the requisite provision concerns discriminatory treatment based on hatred towards certain groups but lacks the element of inciting hatred or violence towards these groups.

There is thus an overwhelming trend in OECD Members to criminalise hate speech and provide prison sentences for serious cases involving incitement to hatred or violence, with aggravated prison sentences for cases of public incitement or serious violence against certain groups. This would appear to be largely consistent with the international standards set out above.

As a reaction to widespread public concerns, a number of OECD Members, including **France**, **Germany**, **Israel** and the **United Kingdom** have also adopted new legislation that increases pressure on social media companies to remove hate speech and other harmful content from their platforms within a particular period.[1] Demand for better moderation of harmful speech by both social media platforms and governments has increased just as new national regulations on content removal have been criticised by CSOs in some countries for being too broad and sometimes based on opaque and ambiguous criteria, posing a risk to freedom of expression.[2]

In countries where regulatory mandates are lacking, such as the **United States**, technology companies have developed their own strategies for identifying harmful material. In both scenarios, governments and companies have faced criticism for measures either being too vague or remaining insufficient (UN, 2021[25]; OECD, 2019[26]), as well as for a lack of transparency and consistency when it comes to enforcing rules on content moderation.[3] The OECD report *An Introduction to Online Platforms and Their Role in the Digital Transformation* notes that platforms responsible for carrying out filtering need sufficient clarity and guidance from governments in order to be able to comply with filtering requirements without obstructing freedom of expression (OECD, 2019[26]).

Civil society actors have also raised concerns about leaving human rights compliance in the hands of private sector companies, which are not viewed by them as being sufficiently accountable to take on the role of online regulators. Moreover, there are concerns about the public interest contrasting with the self-interest of the technology companies whose business models create incentives for gaining audiences' attention and which may promote sensationalist, scandalous and false information as a result (Smith, 2019[27]; Lanza, 2019[28]; Article 19, 2020[20]; Freedom House, 2020[29]). Chapter 4 (Section 4.4.2 on implementation challenges and opportunities for freedom of expression online) provides a detailed overview of government-led measures in OECD Members and beyond to combat online hate speech and/or harassment in OECD Members, including those related to content moderation, co-regulation with the private sector and self-regulation.

1. Even though France was not part of the Survey on Open Government, and the United States did not participate in the civic space section of the Survey, they are mentioned here as examples of countries that have adopted measures to counter online hate speech.
2. The German NetzDG Law, for example, has sparked controversies about the potential negative impacts of excessive regulations on online freedom of expression as social media platforms removed legitimate content under its provisions. Critics have expressed concerns that its provisions are too broad, which may incentivise social media platforms to over-regulate in order to avoid sanctions and thereby remove legal speech (UN, 2019[17]; Freedom House, 2020[29]).
3. In the United States, observers have claimed that content moderation policies to counter hate speech and algorithmic bias lead to the removal of comparatively mild content posted by people of colour, while other speech that appears more inflammatory remains (Angwin, 2017[30]; Freedom House, 2020[29]; Murphy, 2020[31]). In Mexico, a bill on hate speech in June 2020 was criticised by a coalition of CSOs for its vague language. CSOs argued in a position paper that only certain types of speech should be addressed through criminal law due to the potential harm to freedom of expression (Red en Defensa de los Derechos Digitales, 2020[32]).

Source: (OECD, 2020[33]); Article 19 (2020[20]), *The Global Expression Report 2019/2020*, https://www.article19.org/wp-content/uploads/2020/10/GxR2019-20report.pdf; United Nations (2021[25]), *Report of the UN Special Rapporteur on Minority Issues*, https://www.ohchr.org/EN/Issues/Minorities/SRMinorities/Pages/annual.aspx; Smith, R.E. (2019[27]), *Rage Inside the Machine: The Prejudice of Algorithms and How to Stop the Internet Making Bigots of Us All*, https://www.bloomsbury.com/uk/rage-inside-the-machine-9781472963888/; Freedom House (2020[29]), *Freedom on the Net 2020: The Pandemic's Digital Shadow*, https://freedomhouse.org/report/freedom-net/2020/pandemics-digital-shadow; United Nations (2020[34]), *Observations on Revised Draft (November 2019) of General Comment 37 on Article 21 of the ICCPR*; Lanza, E. (2019[28]), *Informe Anual de la Relatoría Especial para la libertad de Expresión*, http://www.oas.org/es/cidh/expresion/informes/ESPIA2019.pdf.

Blasphemy

Figure 2.3 shows that 33% of all respondents, comprising 28% of respondent OECD Members, have special provisions prohibiting blasphemy, defined for the purposes of this report as an action that shows a lack of respect for a God or religion. Some criminal provisions prohibiting blasphemy or religious defamation[17] can give rise to punishment for criticising or offending certain religions or their leaders by imposing either fines or prison sentences of usually up to six months; in some respondents, the prison sentences may run up to one or even three years.

Where expressions go beyond the limits of a critical denial of other people's religious beliefs and are likely to incite religious intolerance, the European Court of Human Rights has confirmed that states may legitimately consider them to be incompatible with respect for freedom of thought, conscience and religion, and take proportionate restrictive measures.[18] The Parliamentary Assembly of the Council of Europe (PACE) has also stated that as far as necessary in a democratic society, national law should only penalise expressions about religious matters that intentionally and severely disturb public order and call for public violence.[19]

At least two respondents have recently amended their legislation to repeal blasphemy or similar acts. In **Ireland**, the abolition of the blasphemy act followed a referendum held in 2018, while in **Denmark**, a provision on blasphemy – that included potential prison sentences – was abolished in 2017, following a prosecution brought in 2017.

> ***Key measures to consider on legal frameworks governing freedom of expression***
>
> *- Amending defamation laws to ensure that remedies for those whose reputation has been unfairly undermined take the form of a civil suit, not a criminal one and abolishing prison sentences as a potential sanction.*
>
> *- Reforming relevant legislation so that insults to heads of state are no longer considered an offence, and above all to remove prison sentences as a possible sanction.*
>
> *- Ensuring that criminal legislation on hate speech is not overly broad and contains the elements of incitement to hatred, violence or discrimination.*

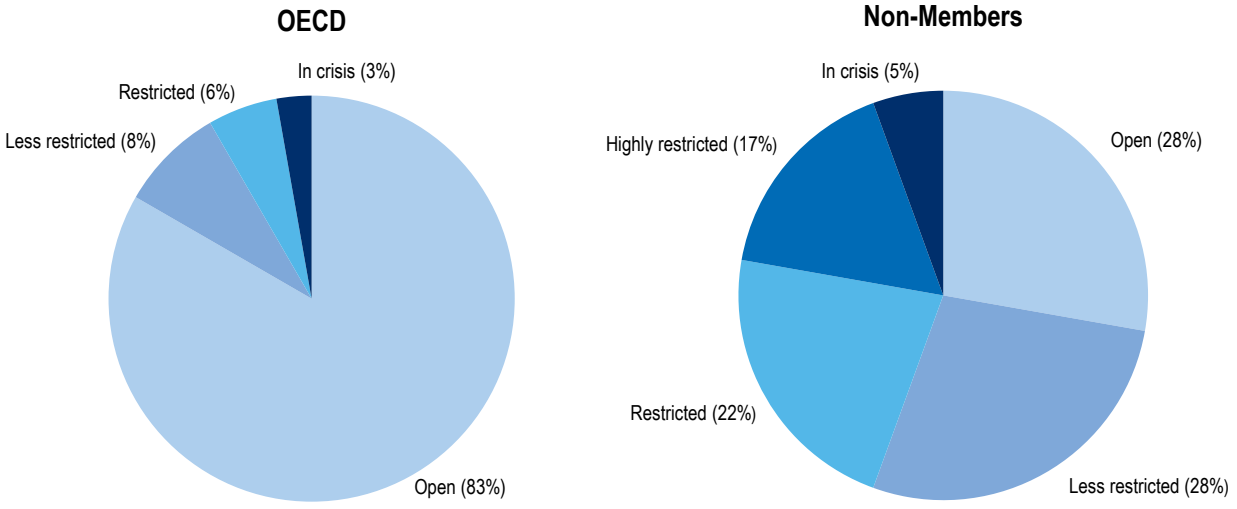
Implementation challenges and opportunities, as identified by CSOs and other stakeholders

At the global level, protection for freedom of expression is declining and this was exacerbated by the COVID-19 pandemic, according to CSOs. CIVICUS has documented that some governments took the pandemic as an opportunity to silence critical voices, enforce new regulations regarding censorship and detain activists, for example (CIVIVUS, 2021[35]). According to Article 19's *Global Expression Report* (2021[1]), many governments placed disproportionate restrictions on the media and repressed information during the pandemic. Two out of every 3 people, amounting to a total of 4.9 billion people globally, "are living in countries that are highly restricted or experiencing a free expression crisis", according to Article 19 (2021[1]).

Figure 2.7 provides an overview of freedom of expression rankings from Article 19 for 36 OECD Members and 18 non-Members that responded to the 2020 Survey on Open Government.[20] The data, which are based on factual information as well as expert assessment, demonstrate that the majority (83%) of OECD Members rank as "open", meaning it is possible for citizens to access information and distribute it freely, share their views both on and off line, and to protest in order to hold their governments to account. However, 3 OECD Members (8%) are ranked "less restricted", 2 OECD Members (6%) as "restricted" and 1 OECD Member (3%) is considered to be "in crisis". For non-Members, 28% rank as "open", while several countries are "less restricted" (28%), "restricted" (22%), "highly restricted" (17%) and 1 is considered to be "in crisis" (6%). Identified challenges range from the use of invasive tracking and surveillance tools against human rights defenders and journalists, as well as parliamentary and court shutdowns during the pandemic, to lesbian, gay, bisexual, transgender and intersex (LGBTI)-free declarations at the local government level affecting many citizens' ability to participate in public life, the erosion of the independence of government branches and threats against human rights defenders (Article 19, 2021[1]).

Figure 2.7. Article 19 freedom of expression ranking, 2020

Percentage of OECD Members and non-Members by Article 19 category



Note: "OECD" refers to 36 OECD Members, "non-Members" refers to 18 non-Members that responded to the OECD Survey on Open Government. No data were available for Luxembourg, Mexico (as Article 19 Mexico has its own methodology for tracking and measuring the state of freedom of expression in the country) and Panama. For more information on each country's ranking, consult the Article 19 *Global Expression Report 2021* (2021[1]).
Source: Article 19 (2021[1]), *The Global Expression Report 2021: The state of freedom of expression around the world*, https://www.article19.org/wp-content/uploads/2021/07/A19-GxR-2021-FINAL.pdf.

StatLink https://stat.link/pds7mv

Non-Members face greater challenges related to protecting freedom of expression, with several countries falling into the "restricted", "highly restricted" and "in crisis" categories. However, among non-Members, no one region is a particular outlier. Good practices can also be found in several countries, such as **Argentina, Armenia,** the **Dominican Republic, Peru** and **Uruguay,** all of which rank as "open" (Article 19, 2021[1]). For example, **Argentina** recognised the right to protest as a constitutional right in 2020 and many countries, including **Armenia** and **Tunisia**, saw "great advances" driven by protest movements, according to Article 19 (2021[1]).

As regards the implementation of defamation laws in practice, press freedom organisations and monitoring bodies have indicated that criminal defamation cases continue to be brought against journalists and human rights defenders in retaliation for unwanted investigations or commentary (Freedom House, 2021[36]; OSCE, 2017[37]). Research suggests that occasional convictions continue to take place in countries considered to be strong defenders of media freedom, including several OECD Members, such as **Greece** (OSCE, 2017[37]) and **Italy** (Borghi, R., 2019[38]). In some countries, an increasing trend was noted in recent years of convictions for defamation and related prison sentences (OSCE, 2017[37]). While the application of defamation laws protecting heads of state appears to be a dead letter in practice in most countries, they are still being applied in some, including **Germany**, **Poland** and **Türkiye** (POLITICO, 2021[39]; OSCE, 2017[37]).

In recent years, human rights groups and CSOs have also raised concerns about new anti-terrorism and security legislation having potentially negative effects on freedom of speech, including in the **Philippines** (McCarthy, 2020[40]; Amnesty International, 2020[41]) and **Türkiye** (ICNL, 2022[42]), given the broad definitions of incitement to terrorism in national laws (Section 4.4.2 in Chapter 4). When legal frameworks governing counter-terrorism are not clearly defined or are overly broad, this can have the effect of silencing speech and legitimate reporting by journalists. The Council of Europe Commissioner for Human Rights has stressed that anti-terror legislation should "only apply to content or activities which necessarily and directly imply the use or threat of violence with the intention to spread fear and provoke terror" (Mijatović, 2018[43]). Moreover, new legislation obliging online content service providers to delete unlawful or criminal content within a short time span, such as in **Germany,** has raised concerns regarding freedom of expression among CSOs, in the absence of sufficient safeguards to prevent the deletion of lawful content (Article 19, 2020[20]) (Section 4.4.2 in Chapter 4).

> ***Key measures to consider on implementation challenges relating to freedom of expression***
>
> *Protecting and fostering the implementation of freedom of expression laws as part of a vibrant "public interest information ecosystem". One way to achieve this is to ensure there is an independent and adequately resourced mechanism in place to monitor, identify and address de facto restrictions on freedom of expression involving affected stakeholders such as specialist CSOs and journalists.*

For key measures to consider on legal frameworks to counter hate speech and mis- and disinformation as threats to online civic space, see Section 4.4.2 in Chapter 4.

2.1.2. Freedom of peaceful assembly

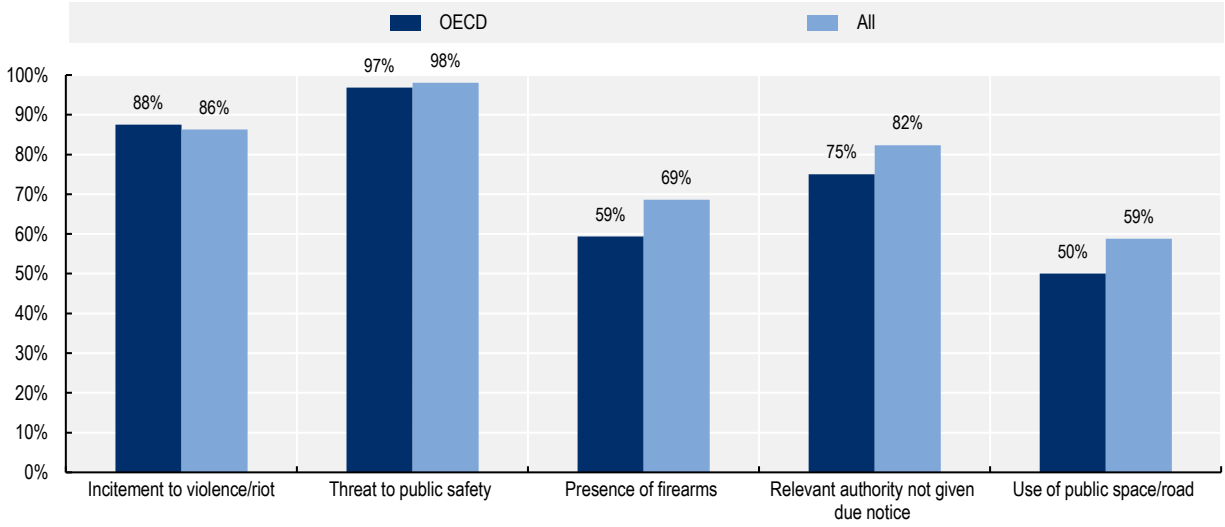
Similar to freedom of expression, freedom of peaceful assembly is recognised as a fundamental right in democratic societies[21] that is essential for the public expression of people's views and opinions.[22] In line with international guidance, people should, in principle, be able to exercise the right to peaceful assembly in all public spaces, and participants in such events should have sufficient opportunity to manifest their views effectively, within sight and sound of their target audience, or at whatever site is otherwise important to their purpose (UN, 2020[44]; OSCE/ODIHR/Venice Commission, 2020[45]). Moreover, the use of public space for assemblies is as legitimate as other uses of public space and assemblies may not be prohibited or dissolved due to traffic obstructions or inconvenience. International bodies have further stressed that restrictions on the right to freedom of peaceful assemblies should generally not be based on the contents of the messages that they seek to communicate.[23]

Legally mandated exceptions and conditions

Figure 2.8 shows that the right to freedom of peaceful assembly is limited by a variety of exceptions, exemptions or conditions in OECD Members and non-Members.

Figure 2.8. Legally mandated exceptions to freedom of peaceful assembly, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (32 OECD Members and 19 non-Members). Data on Austria, Colombia, Denmark, Guatemala, Honduras, Ireland, Netherlands, Norway, Slovenia and Sweden are based on OECD desk research for at least one category and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/tlcsi3

Incitement to violence and threat to public safety

Figure 2.8 shows that 86% of all respondents, comprising 88% of respondent OECD Members, prohibit incitement to violence, both generally and specifically in the context of assemblies. Further, 98% of all respondents and 97% of respondent OECD Members allow assemblies to be limited or banned if they constitute threats to public safety. As shown in Figure 2.8, 69% of all respondents and 59% of respondent OECD Members have laws that specify that firearms and other weapons may not be carried at public assemblies.[24]

As per international guidance, restrictions on freedom of peaceful assembly in cases involving incitement to violence or threats to public safety are considered legitimate. Freedom of peaceful assembly excludes gatherings where organisers or participants have violent intentions or otherwise reject the foundations of a democratic society, for example.[25] The European Court of Human Rights has also specified in its case law that the term "peaceful" includes conduct that may annoy or give offence to other individuals opposed to the ideas or claims that it seeks to promote, or that temporarily hinders, impedes or obstructs activities of third parties.[26] In practice, this means that assemblies are still regarded as peaceful even if their participants call for unpopular political or social ideas, including, for example, autonomy or secession from a state (ECtHR, 2001[46]), limitations on abortion (ECtHR, 1988[47]) or if they temporarily block traffic (OSCE/ODIHR/Venice Commission, 2020[45]).

There is no indication that any relevant legislation in respondents places the responsibility of guaranteeing public safety during assemblies on the organisers. While laws in a number of respondents, including **Cameroon**, **Latvia**, **Morocco**, the **Philippines** and **Tunisia**, stipulate that the organisers of assemblies are responsible for maintaining order and preventing any infringement of the law, the extent to which organisers are held liable for incidents occurring during assemblies depends on how these laws are implemented in practice. According to UN guidance, states are expected to provide adequately resourced police arrangements necessary for maintaining public order and safety and should not oblige assembly organisers to provide such services (Kiai and Heyns, 2016[48]).

Notification of assemblies and use of public spaces

Figure 2.8 illustrates that in 82% of all respondents and 75% of respondent OECD Members assembly organisers are obliged to notify the relevant authority in advance and, in some respondents, such as **Cameroon, Ecuador, Italy** and **Korea**, a failure of notification can lead to imprisonment. In **Israel**, it is a criminal offence to hold a meeting or a march without the required permit or to breach the conditions stated in the relevant license provided by authorities for an assembly.

In 59% of all respondents and 50% of respondent OECD Members, the use of public spaces to hold peaceful assemblies is restricted. In addition to provisions allowing changes to the place or time of an assembly by authorities where this is necessary to protect other interests, laws in certain respondents, such as **Armenia**, **Romania** and **Tunisia**, indicate public spaces where it is not permissible to hold assemblies, or where assemblies are only permissible in certain circumstances, e.g. close to borders, military installations or schools or in areas close to constitutional organs. **Germany** has a law outlining restricted areas around federal constitutional organs, stating that assemblies in these areas are only permissible insofar as they do not unduly restrict the work of these organs and access to them. In **Greece**, outdoor assemblies may be prohibited in a specific area, in case of threats involving a serious disturbance of social and economic life. On the other hand, **Kazakhstan** requires assemblies to be held in certain specialised locations. Other respondents, such as **Indonesia** and **Lebanon**, only allow protests to take place at certain times of the day (ICNL, 2021[49]; Right of Peaceful Assembly, 2021[50]).

International human rights bodies have highlighted that advance notification requirements for holding assemblies, while permissible to ensure their smooth conduct,[27] may not be used to stifle the freedom of peaceful assemblies and should never turn into *de facto* authorisation regimes.[28] According to international guidance, the failure to notify authorities of an assembly beforehand does not by itself justify an interference with the assembly; especially where assemblies remain peaceful, public authorities are required to exhibit a degree of tolerance.[29] Moreover, blanket restrictions on holding assemblies in certain locations should be avoided as they risk being disproportionate[30] and can only be justified if there is a real danger of disorder which other less stringent measures cannot prevent.[31] International human rights bodies also recommend avoiding designating perimeters around certain official buildings as areas where assemblies may not occur.[32] Rather, authorities are advised to justify any time, place and manner restrictions on assemblies on a case-by-case basis.[33]

In a significant development in **Brazil**, in 2021, the Supreme Federal Court ruled that meetings and demonstrations are permitted in public places regardless of prior official communication to authorities and that the state is obliged to compensate media professionals injured by police officers during news coverage of demonstrations involving clashes between the police and demonstrators (Supreme Federal Court, 2021[51]).

In **Canada**, certain court decisions in 2019 and 2020 came to the conclusion that measures regulating public space and health and safety matters did not infringe on the right to freedom of peaceful assembly. In other cases, courts concluded that based on the applicable provincial legislation, local police did not have the legal authority to establish a police perimeter, including baggage searches, around a public park where demonstrators were gathering, and found that the legal requirement to provide advance notice to the police of the time, location and/or route of a demonstration, with deviations leading to liability punishable by fines were not a justifiable limit to freedom of peaceful assembly (Court of Appeal Ontario, 2020[52]; Court of Appeal Québec, 2019[53]). In the **United Kingdom**, a Policing Bill introduced in 2022 allows the police to impose a start and finish time on public protests and set noise limits, which was criticised by CSOs for overly restricting people's ability to protest (Weakly, 2022[54]).

Key measures to consider on legal frameworks governing peaceful assembly

- Allowing peaceful assemblies to be conducted in all public spaces, so that participants have sufficient opportunity to manifest their views effectively, within sight and sound of their target audience, avoiding blanket restrictions and justifying any restrictions, for example for security reasons, on a case-by-case basis.

- Ensuring that legal frameworks do not provide for imprisonment as a potential sanction for a failure of notification of assemblies.

Implementation challenges and opportunities, as identified by CSOs and other stakeholders

In recent years, across the world, citizens have been utilising their civic freedoms to engage in mass protests, which have brought issues related to social and economic inequality, corruption, police accountability, violence and calls for greater civic rights to the centre of political debates in many countries. Indeed since 2017, three-quarters (74%) of OECD Members have experienced significant anti-government protests, some of which have occurred on multiple occasions, according to the Carnegie Endowment for International Peace (2021[55]).

Across all OECD Members and the non-Members that responded to the Survey, the Carnegie Endowment has documented more than 120 significant anti-government protests in its Global Protest Tracker, of which 14 or 37% involved 100 000 or more people taking part (Carnegie Endowment for International Peace, 2021[55]). Several respondents, namely **Chile**, **Lebanon**, **Korea** and the **United Kingdom**, have experienced protests involving 1 million people or more. Of these protests, 27 in OECD Members resulted in "significant outcomes", such as a referendum, resignations, dismissals or impeachments of senior government officials or heads of state, a collapse of government or withdrawals of proposed legislation (Carnegie Endowment for International Peace, 2021[55]). More than 25 of these significant anti-government protests were COVID-19 related, meaning that people were voicing opposition to restrictions, lockdowns and vaccination passes. In addition to these outcomes, new forms of civic activism have emerged in the past years, with much more fluid and informal organisational settings and a focus on the new opportunities brought by technology and digital activism.

While in most OECD Members, citizens can hold non-violent demonstrations without fear of reprisal, organisations monitoring civic space have observed disproportionate limitations on the right to protest in past years in some countries. These have included situations where assemblies were not adequately policed and where participants were not protected (FRA, 2018[56]), as well as the excessive use of police force against protestors in some contexts, and a failure to protect participants and journalists covering the protests, according to multiple sources (Frontline Defenders, 2021[57]; 2020[58]; CIVICUS, 2020[59]; Narsee, 2021[60]; U.S. DoS, 2021[61]; 2020[62]; ENNHRI, 2021[63]). There have also been cases of fatalities and injuries following engagement by state forces in the context of demonstrations (ACLED, 2021[64]; Article 19, 2020[20]). Throughout 2019 and 2020, CSOs and monitoring organisations reported that protestors were met with detentions and the use of excessive force in at least 11 OECD respondents (Freedom House, 2021[36]; U.S. DoS, 2020[62]; 2021[61]; ENNHRI, 2021[65]; Article 19, 2020[20]; IACHR, 2018[66]). In Europe, detentions of protestors were documented in at least 16 EU Member states in 2020, while the use of excessive force was recorded in at least 10 EU Member states (Narsee, 2021[60]).

As a reaction to increased police violence during protests, recent court decisions and legal changes have been introduced in some Latin American countries to reduce and control the use of police force during protests, including in **Brazil**, **Chile**, **Colombia** and **Mexico** (Corte Suprema de Justicia, 2020[67]; IACHR, 2021[68]; Ministerio del Interior, 2021[69]). In **Mexico**, a law on the use of police force adopted in 2019 provides for adequate police training and the protection of protestors and permits the use of different levels of force during violent demonstrations. The Mexican National Human Rights Commission filed an Action of Unconstitutionality related to the law, arguing that it did not respect the principles of legality, necessity and proportionality and failed to provide the definition of methods, techniques and tactics of the use of force (Comisión Nacional de los Derechos Humanos, 2019[70]). Civil society groups have also criticised it for failing to specify the circumstances and manner in which certain weapons may be used during assemblies (Amnesty International, 2019[71]; 2019[72]).

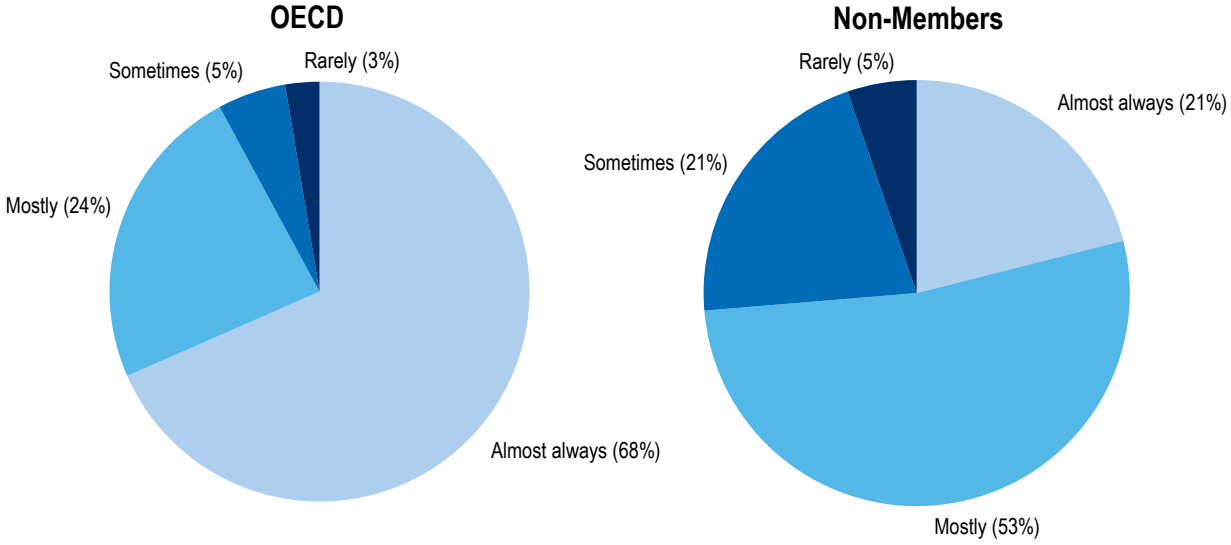
A decree passed in **Colombia** in 2021 permitted the military to police assemblies; this decree was suspended provisionally in July but CSOs have raised concerns that it is a temporary suspension and that potential threat to civic space thus remains (ICNL, 2021[73]). In **Peru**, a Police Protection Act adopted in March 2020 confirmed that the police was exempt from criminal liability and also expressly repealed provisions of the Law on the Use of Force by the Peruvian Police, which had established the principle of proportionality in the use of force by every police officer. According to the Office of the UN High Commissioner for Human Rights, this amendment contravenes applicable international standards (OHCHR, 2020[74]).

The V-Dem Institute's indicator on freedom of peaceful assembly, which is based on expert evaluation (Varieties of Democracy Institute, 2021[75]),[34] shows that in 68% of all OECD Members, state authorities almost always allow and actively protect peaceful assemblies, except in rare cases of lawful, necessary and proportionate limitations (Figure 2.9). However, there are some exceptions. For example, almost one-quarter (24%) of OECD Members mostly allow peaceful assemblies and only in rare cases arbitrarily deny citizens the right to assemble peacefully: 2 OECD Members (5%) sometimes arbitrarily deny citizens the right to assemble peacefully and 1 country rarely allows peaceful assemblies.

The situation is more challenging in non-Members where state authorities almost always allow and actively protect peaceful assemblies in 21% of respondents. In more than half (53%) of respondents, state authorities mostly allow peaceful assemblies, while in 21%, state authorities sometimes allow peaceful assemblies. In 1 country (5%), state authorities rarely allow peaceful assemblies.

Figure 2.9. V-Dem Institute indicator for freedom of peaceful assembly, 2021

Percentage of OECD Members and non-Members by V-Dem Institute category



Note: "OECD" refers to all 38 OECD Members, "non-Members" refers to the 19 non-Members that participated in the 2020 OECD Survey on Open Government. V-Dem asks: "To what extent do state authorities respect and protect the right of peaceful assembly?". Answers range from 1 to 4, with the least democratic response being "0" and the most democratic being "4". Responses range from:
0: Never. State authorities do not allow peaceful assemblies and are willing to use lethal force to prevent them.
1: Rarely. State authorities rarely allow peaceful assemblies but generally avoid using lethal force to prevent them.
2: Sometimes. State authorities sometimes allow peaceful assemblies but often arbitrarily deny citizens the right to assemble peacefully.
3: Mostly. State authorities generally allow peaceful assemblies but in rare cases arbitrarily deny citizens the right to assemble peacefully.
4: Almost always. State authorities almost always allow and actively protect peaceful assemblies except in rare cases of lawful, necessary and proportionate limitations.
For the purposes of data visualisation, the authors have designated categories to countries that scored within 0.5 of each of the 5 options (e.g. a score of 2.5 and above was equated to 3, while below 2.5 was equated to 2).
Source: V-Dem (2021[75]), *The V-Dem Dataset*, https://www.v-dem.net/vdemds.html.

> ***Key measures to consider on implementation challenges relating to peaceful assembly***
>
> *Actively facilitating the right to peaceful assembly, including by ensuring that law enforcement agencies involved in policing assemblies act in line with international guidance in respecting the rights of participants and bystanders. An emphasis on de-escalation tactics can help to ensure the avoidance of the use of force during protests or, where it is unavoidable, to ensure that it is tempered by strict operating procures and guided by the principles of proportionality, necessity, precaution, legality and accountability to avoid harmful consequences.*

2.1.3. Freedom of association

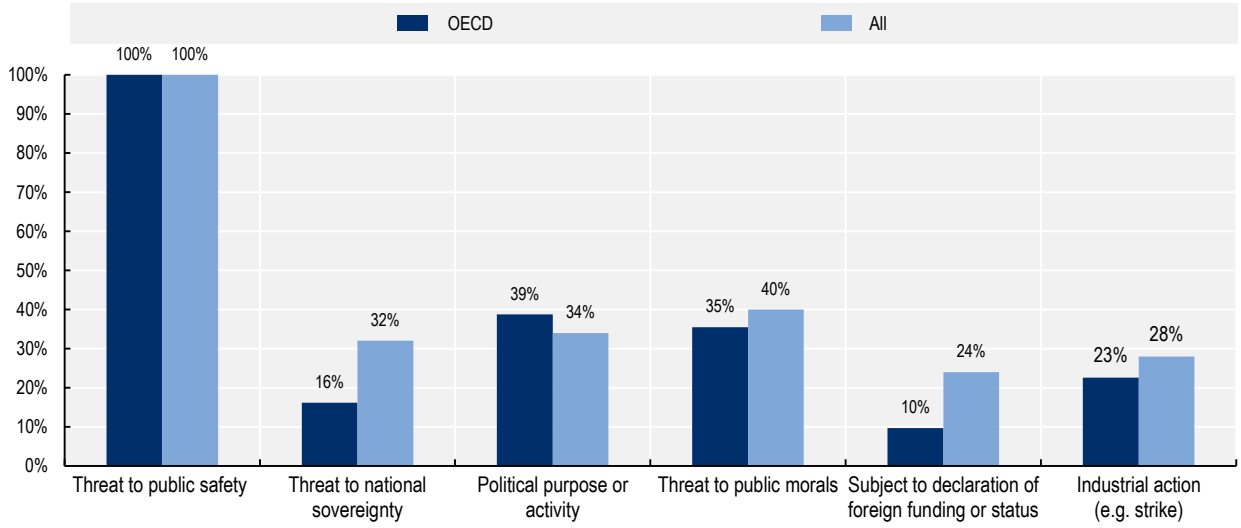
Associations are crucially important for the proper functioning of any democracy; indeed, the European Court of Human Rights has recognised that the participation of citizens in the democratic process is to a large extent achieved through people belonging to associations, in which they exchange with each other and pursue common objectives collectively.[35] The court has further found that the failure to respect formal legal requirements cannot be considered such serious misconduct as to warrant the outright dissolution of an association.[36] The Inter-American Court of Human Rights (IACHR) has also noted the right of individuals to associate freely, without interference from public authorities[37] and has found that the free and full exercise of this right imposes on states the duty to create an enabling environment in which associations can operate (this same principle has been confirmed in the OSCE/ODIHR-Venice Commission Guidelines on Freedom of Association).[38]

Legally mandated exceptions and conditions

Figure 2.10 illustrates a number of common exceptions, exemptions or conditions to freedom of association.

Figure 2.10. Legally mandated exceptions to freedom of association, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 50 respondents (31 OECD Members and 19 non-Members). Data on Austria, Canada, Colombia, Denmark, Ecuador, Germany, Greece, Honduras, Ireland, Italy, Korea, Lebanon, Mexico, Norway, Panama, Peru, the Philippines, Slovak Republic, Slovenia, Türkiye, Ukraine and United Kingdom are based on OECD desk research for at least one of the categories and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/spwdyv

Public safety, public order and national sovereignty

Figure 2.10 shows that, in all respondents, laws state that associations seen as posing a threat to public safety or public order[39] may face bans or other restrictions on their freedom of association rights. While most OECD Members have legal provisions that allow restrictions on freedom of association in the interests of national security, only 32% of all respondents and 16% of OECD Members have confirmed that such restrictions are also possible in the interests of protecting or maintaining national sovereignty.[40] In most cases, the relevant provisions link national sovereignty to interests set out in international instruments, such as national security and public safety and order.

The joint Organization for Security and Co-operation in Europe (OSCE), Office for Democratic Institutions and Human Rights (ODIHR) and Venice Commission Guidelines on Freedom of Association (2015[76]) have recommended a narrow interpretation of the legitimate aims justifying restrictions on freedom of association on the basis of national security and public safety.[41] At the same time, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has emphasised that the protection of national sovereignty is not, in itself, listed as a legitimate reason for limiting freedom of association in relevant international human rights instruments.[42]

Public morals

Legislation in 40% of all respondents and 35% of respondent OECD Members provides for limitations in cases where associations are seen as posing a threat to public morals (Figure 2.10). The joint OSCE/ODIHR-Venice Commission Guidelines on Freedom of Association (2015[76]) have recommended a narrow interpretation of the legitimate restrictions on freedom of association based on public morals.[43] Such threats should thus not be abused to discriminate against associations protecting and advocating for the rights of particular groups, for example, such as LGBTI groups.

Political purpose or activity

A political purpose or activity of associations may lead to limitations in 34% of all respondents and 39% of respondent OECD Members (Figure 2.10). While in most countries, associations generally have the right to criticise public policies, restrictions on the political engagement of CSOs are related to specific situations. Limitations can be: i) linked to CSO activities related to political parties and elections (registering a candidate for election; supporting candidates or an election campaign; direct or indirect financing of a political party or elections); ii) apply to a wider spectrum of public policy activities (in addition to election campaigning, lobbying for or against specific laws, engaging in public advocacy, pursuing interest-oriented litigation or engaging in the policy debate on any issue); or iii) be related to a specific legal status, e.g. with limitations for organisations with public benefit or charity status (for a detailed discussion, including country examples, see Section 5.2.2 on activities of CSOs in Chapter 5).

As far as an association's political activity and purpose are concerned, the joint OSCE/ODIHR/Venice Commission Guidelines on Freedom of Association (2015[76]) recommend that associations should have the right to participate in matters of political and public debate, while the Council of Europe's Committee of Ministers has stressed that associations should be allowed to support particular candidates or parties in an election or referendum, provided that they are transparent about it and that such support is covered by legislation on the funding of elections and political parties (CoE, 2007[77]).

Declaration of foreign funding

While the receipt of funds is regulated by law in most countries and is subject to conditions imposed through international anti-terrorism and anti-money laundering frameworks, only 24% of all respondents and 10% of respondent OECD Members acknowledged that receipt of foreign funds is subject to a declaration (Figure 2.10). Certain countries, notably **Israel**, **Morocco, Tunisia** and **Türkiye**, impose legal requirements or conditions on all associations receiving foreign funding, mostly involving additional reporting obligations, with sanctions imposed on associations for non-compliance (Section 5.4.1 in Chapter 5).

The UN Special Rapporteur on freedoms of assembly and association has highlighted the right of associations to seek, receive and use financial, material and human resources, whether domestic, foreign or international, for the pursuit of their activities, as these are essential to their existence and operations.[44] In addition, the Special Rapporteur, the IACHR and the OSCE/ODIHR/Venice Commission Guidelines on Freedom of Association (2015[76]) have noted with concern state legislation and practice restricting or blocking associations' access to resources on the grounds of the nationality or country of origin, and the stigmatisation of those who receive such resources (Section 5.4).[45] Guidance in this area aims to ensure that any such restrictions on associations are narrowly interpreted and applied, so that they neither completely extinguish the right to freedom of association nor encroach on its essence. In particular, as noted by the UN Human Rights Committee and the European Court of Human Rights, countries wishing to prohibit or dissolve associations should be able to demonstrate that such action is necessary to avert a real threat to national security or democratic order and that less intrusive measures would be insufficient to achieve this purpose.[46]

Industrial action

Figure 2.10 shows that 28% of all respondents and 23% of OECD Members confirmed that while industrial actions or strikes are permissible, constitutions, case law or labour laws set out specific safeguards or legal requirements or only permit certain kinds of strikes. In **Lithuania**, for example, the relevant service statutes prohibit certain public officials working in sectors providing urgent services, such as police officers or firefighters, from going on strike. In **Ukraine**, civil servants, members of the police and of the army are not allowed to organise or participate in strikes.

As per the case law of the European Court of Human Rights, complete bans on certain public officials exercising their right to strike require sufficient and solid justification, including for workers providing essential services.[47] At the same time, the court has found that a ban on the right to strike of law enforcement agents may be justifiable on public safety grounds and to prevent disorder, given that they are armed and that they need to provide uninterrupted service.[48] Similar considerations apply to members of the armed forces, provided that they are not deprived of the general right to freedom of association.[49]

> ***Key measures to consider on legal frameworks governing freedom of association***
>
> *- Applying a narrow interpretation of the legitimate aims justifying restrictions on freedom of association.*
>
> *- Ensuring that associations are free to seek, receive and use financial, material and human resources, whether domestic, foreign or international, in the pursuit of their activities and that any related restrictions are limited to those that are necessary to combatting criminal acts such as fraud, terrorism or money laundering.*

Implementation challenges and opportunities, as identified by CSOs and other stakeholders

Freedom of association is an essential element of civic space as it guarantees the right of citizens to actively participate in movements ranging from informal associations to registered organisations and allows them to safeguard and promote issues that affect their lives. Restrictions in practice to this right include, for example, denials or revoking of registration for CSOs, restrictions on their activities, an increase in Strategic Lawsuit against Public Participation (SLAPP) cases against CSOs, difficulties in accessing predictable and consistent public funding, and targeting of groups focusing on particular issues. For a more in-depth discussion on the implementation of freedom of association, see Section 5.2.3 on challenges for an enabling environment for CSOs and Section 5.4.2 on challenges for funding in Chapter 5.

2.1.4. Right to privacy

Privacy or private life is a broad concept that covers a person's physical and psychological integrity and may embrace multiple aspects of the person's physical and social identity.[50] As stated in international human rights instruments, interferences with this right are possible if they are not arbitrary or unlawful,[51] meaning that they need to be based on law,[52] be in accordance with international legal provisions, aims and objectives and be reasonable in particular circumstances.[53] The American Convention on Human Rights (ACHR) provides protection against arbitrary or abusive interference with persons' private life, and legitimate aims set out in the European Convention on Human Rights (ECHR) include national security or public safety, as well as the economic well-being of the country, the prevention of disorder or crime, or the protection of health or morals.[54] Notably, national sovereignty is not specified as a legitimate aim in itself.[55] The European Court of Human Rights has stressed the importance of striking a fair balance between the competing interests of the individual with regard to the right to privacy and of the community as a whole.[56]

The protection of personal data is of fundamental importance to a person's enjoyment of the right to a private life, which, as noted by the court, also extends to the collection and storage of private data by the state (Section 4.5 in Chapter 4).[57] Generally, according to the case law of the court, interference with individuals' right to private life are tolerable under the ECHR only where they are strictly necessary to safeguard democratic institutions.[58] International human rights bodies have found that relevant legislation must specify in detail the precise circumstances in which such interferences may be permitted and must contain minimum safeguards against abuse.[59]

Legally mandated exceptions and conditions

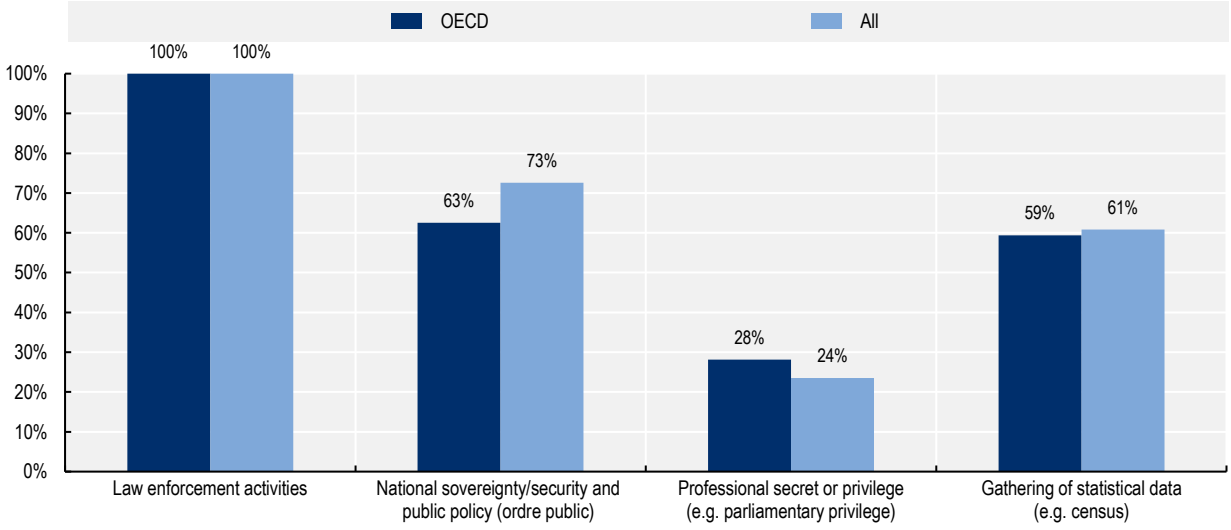
As with other civic freedoms, the right to privacy is limited by certain exceptions, exemptions or conditions in domestic laws, the vast majority of which are permissible under the international legal standards mentioned above. As can be seen in Figure 2.11, all respondents have confirmed that international instruments, constitutions, criminal procedure laws or privacy laws state that interference with this right is permissible in the context of law enforcement activities, for example. Figure 2.11 further shows that 73% of all respondents and 63% of OECD respondents place restrictions on the right in order to maintain national sovereignty or security, or public order.

Further, 61% of all respondents, comprising 59% of OECD Members, have data protection laws and laws on statistics that specify that private data may be requested, obtained and processed in the context of gathering statistical data. In addition, in certain respondents, such as **Austria**, **Canada** and **Ukraine**, legislation provides exceptions to the rights of individuals to access their own personal data to protect professional secrets or privileges, for example, if granting such access could put a trade or business secret at risk (Austria) or in cases where it could impact solicitor-client privilege, the professional secrets of advocates or notaries, or patent or trademarks legislation, among others (Canada); 24% of all respondents and 28% of OECD respondents have this exception.

Legislation has been passed in recent years in some respondents to strengthen state responses against terrorism and other crimes by strengthening wire-tapping and similar capacities, notably in **Australia** (UN, 2018[78]), **Germany** (Fischer, 2021[79]) and the **Netherlands** (Houwing, 2021[80]). This has raised concerns among CSOs and international human rights bodies as it may risk compromising individuals' privacy rights due to insufficient oversight mechanisms and safeguards to protect them. Similar considerations apply with respect to **Türkiye**, where following legal amendments in 2020, social networks are obliged to turn over user data to authorities, including for anonymous accounts if criminal cases are launched (Yackley, 2021[81]).

Figure 2.11. Legally mandated exceptions to the right to privacy, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (32 OECD Members and 19 non-Members). Data on Colombia, Guatemala, Ireland, Norway, the Philippines and Slovenia are based on OECD desk research for at least one of the categories and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/xhp40b

Key measures to consider on legal frameworks governing the right to privacy

Regularly reviewing whether interference with the right to privacy follows legitimate aims and is necessary and proportionate in that respect. Relevant legislation setting out exceptions to the right to privacy in a clear and comprehensive manner, particularly in the context of law enforcement activities or activities that protect national sovereignty or security, can help in this regard.

Implementation challenges and opportunities, as identified by CSOs and other stakeholders

One of the most contested aspects of the right to privacy is the intersection between privacy and state security interests, including surveillance. Human rights bodies and CSOs have repeatedly expressed related concerns in recent years (UN, 2020[82]; ECNL, 2020[83]; Article 19, 2020[20]). The UN Special Rapporteur on the right to privacy has expressed concern about the lack of detailed rules, procedures, guidance and independent oversight at both the national and international levels of surveillance practices, for example (UN, 2018[84]). This results in what he has described as a "patchwork quilt" of frameworks that do not adequately cover the use of surveillance by intelligence agencies, with more than 80% of UN members having no laws to protect privacy "by adequately and comprehensively overseeing and regulating the use of domestic surveillance" as of 2018 (UN, 2018[84]). Human rights bodies and CSOs have argued that the use of social media for such purposes is increasingly common. According to Freedom House, in 2019, at least 40 of the 65 countries covered by the Freedom on the Net Index (of which 15 are OECD Members) had instituted advanced social media monitoring programmes as part of ensuring security, public order or limiting disinformation (2019[85]). Within this context, many citizens are wary of both government and private sector activities related to surveillance. There is a perception of being monitored by governments among some CSOs in the EU, with 7% of CSOs responding to a survey by the EU Agency for Fundamental Rights (FRA) reporting being surveilled by law enforcement in 2020 (Section 5.6.4 in Chapter 5; for a discussion and key issues to consider related to privacy concerns see sections on personal data protection, artificial intelligence and civic space in Chapter 4) (FRA, 2021[86]).

More recently, concerns have also been raised about COVID-19-related surveillance impinging on people's right to privacy (Deutsche Welle, 2020[87]; Funk, 2020[88]; Freedom House, 2020[29]; UN, 2021[89]). The pandemic has resulted in a variety of means being used to track the spread of the infection, including: manual contact tracing; the use of Bluetooth, Global Positioning System (GPS) and cell tower tracking and bar and quick response (b/QR) codes and wearable technology; the use of cell tower and other data triangulation sources originally devised as counter-terrorist measures; mandatory check-ins with barcodes and QR codes and vaccine passports (UN, 2021[89]). The Special Rapporteur on the right to privacy has noted the danger of "surveillance creep" or the repurposing of data without permission. In a 2021 report on the pandemic, he noted that the actions taken by some governments had, whether knowingly or unknowingly, "crossed the line" in terms of human rights law and what is "appropriate and acceptable in democratic societies", with the surveillance methods being used for public health and intelligence gathering purposes becoming blurred and merging, potentially paving the way for the normalisation of intrusive measures (UN, 2021[89]).

Key measures to consider on implementation challenges relating to the right to privacy

- Strengthening mechanisms for the independent authorisation and oversight of state surveillance to ensure that intrusive and arbitrary measures do not become the norm.

- Establishing and maintaining, at a minimum, an independent external authority responsible for authorising and overseeing surveillance measures undertaken by law enforcement agencies to ensure that activists and CSOs conducting lawful activities are not arbitrarily affected. Greater transparency in this area and systematic human rights-based impact evaluations, undertaken with non-governmental actors, could also help to ease concerns about the arbitrary targeting of civil society.

2.1.5. COVID-19-related changes to legal frameworks in OECD Members

As a response to the outbreak of the COVID-19 pandemic in early 2020, most countries took immediate legal measures to protect citizens and communities, for which there was widespread public support. While such measures were deemed essential to limit and mitigate the effects of the pandemic and were widely supported by the public, they also restricted civic space, underpinning concerns about the risk of democratic backsliding as a result of the pandemic (Alizada et al., 2021[90]; OECD, 2021[91]). At the start of the pandemic, 21 OECD Members [60] out of 38 declared a state of emergency[61] to provide the executive with special powers to prevent the spread of the virus (V-Dem Institute, 2021[92]; ICNL, 2021[93]). By the end of June 2021, 12 of these OECD Members[62] were still operating under a state of emergency legislation, indicating a trend towards normalising legislative frameworks over time. The 17 OECD Members that did not declare a state of emergency opted to use other exceptional legal instruments or measures to address the pandemic, as discussed in Box 2.2. As of November 2022, only one OECD Member had emergency measures in place to address the COVID-19 pandemic. Three OECD Members had states of emergency in place, following the Russian Federation's invasion of Ukraine.

In the majority of OECD Members, emergency measures translated into extensive law-making powers for the executive, sometimes with limited or near to no external and above all parliamentary scrutiny, which was exacerbated by the fact that numerous parliaments were hampered by government lockdowns, and there was frequently no opportunity for remote voting or debate on new laws, practices or technologies being put in place (Murphy, 2020[94]). In a number of OECD Members, the permissible duration of states of emergency and executive ruling by decree is limited and states of emergency may only be extended with the approval of, or upon the initiative of, parliament (though there are also examples where this is within the powers of the government) or become invalid if parliament does not approve them or convert them into law at a later date. In certain countries, parliaments reacted to initially wide and unchecked government powers by later passing legislation foreseeing greater oversight and control powers for parliaments.

Based on some of the above laws and practices, concerns have been raised by civil society and the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association about the legality of pandemic-era laws, notably in cases where parliaments were weakened by the inability to meet and debate in person, or where laws were drafted and passed by accelerated procedure (UN, 2020[95]). Such circumstances meant that there was little time for parliamentary scrutiny or for a proper assessment of the impact of such laws on key civic freedoms, as well as in cases where rules were adopted and applied on the basis of weak or non-existent underlying legislation. This lack of oversight and scrutiny, and the fact that some countries have extended or reintroduced emergency measures several times, has given rise to a certain amount of legal uncertainty, particularly regarding the application of relevant laws and the long-term consequences of such measures (Grogan, 2022[96]).

In some cases, emergency legislation has been transformed into ordinary statutory law and remains in force. In countries where states of emergency were already in place even before the pandemic, these situations have now existed for many years, raising concerns about fewer checks and balances in place in the long run. There have also been notable examples of good practices in the context of the pandemic. A 2020 OECD report *Legislative Budget Oversight of Emergency Responses* during the pandemic found that one-quarter of parliaments in the OECD had set up special COVID-19 committees or cross-party working groups to consider emergency responses as they were implemented (2020[97]). Positive practice can be seen in **Finland**, with the standing practice of requiring real-time constitutional and parliamentary scrutiny of government regulations as both constitutional requirements and mandated under the Emergency Powers Act. Further good practice is evidenced in **Sweden**, with the establishment of a commission of inquiry comprising independent experts and reviewing actions taken across central, regional and local governmental levels, and with the further constitution of a cross-party parliamentary commission to review the actions of parliament during the pandemic (Grogan, 2022[96]). Special oversight committees

were also established in the parliaments of **Chile**, **Israel** and **New Zealand**, among others, to monitor and report on government actions at certain stages during the pandemic; the respective reports were also published.

> ***Key measures to consider on COVID-19-related changes to legal frameworks***
>
> *Ensuring that any emergency measures restricting civic space are limited in duration, approved by parliament and overseen by independent institutions, that such measures are subject to judicial review, and that individuals can seek remedies for rights violations through the courts. Further, civic freedoms that are affected by emergency measures should be reinstated.*

Box 2.2. Contribution from the International Center for Not-for-Profit Law (ICNL)

Emergency measures in response to COVID-19

ICNL has tracked over 130 measures adopted by OECD Members in response to COVID-19 that affect human rights and civic space (ICNL, 2021[93]). Under international law, states may take steps during emergencies that restrict certain rights and freedoms; however, they must ensure that such steps are necessary, proportionate and otherwise consistent with international legal obligations (UN, 2018[98]). This box identifies the impacts that emergency measures have had on civic freedoms, discusses positive practices in the deployment of these measures and concludes with recommendations for governments.

In March 2020, nearly every OECD Member formally declared a state of exceptional crisis circumstances due to the COVID-19 pandemic.[1] Some countries, like **Estonia** and **France,** relied on constitutional provisions to activate emergency measures; others triggered emergency procedures via a national law, as was the case in **Japan** under the Act on Special Measures. In some notable cases, parliaments reviewed and renewed states of emergency for limited periods at regular intervals – an approach promoting oversight and the deployment of emergency authorities only as necessary. In **Portugal,** for instance, the state of emergency was reviewed, debated and extended by parliament for 15-day periods and was eventually allowed to lapse.

Impact of emergency measures on civic freedoms

Within the framework of emergency declarations (Section 2.1.5), OECD Members have taken emergency measures in response to COVID-19 that have led to significant restrictions on civic freedoms, including freedom of peaceful assembly, expression, access to information and privacy.

Freedom of assembly

Most OECD Members prohibited public assemblies or capped attendance at such assemblies. Authorities in **Israel**, for example, prohibited participation in protests and demonstrations taking place more than two kilometres from one's residence. Countries' emergency measures also conferred expansive power to local authorities to restrict assemblies, as in **Korea**, where authorities were granted the power to restrict or prohibit assemblies or any other large gathering of people.

In many instances, limits on public gatherings have operated as blanket restrictions. Some OECD Members have positively departed from this approach, however. In **Denmark**, the law restricting gatherings under the pandemic exempted opinion-shaping assemblies, including demonstrations and political meetings. In **Germany**, the constitutional court ruled that health concerns linked to COVID-19 did not furnish grounds for a general ban on demonstrations. In **France**, the highest administrative court issued a ruling allowing demonstrations to resume where specified conditions were met, including that health protections were respected and the events were declared to authorities in advance.

Freedom of expression and access to information

Several OECD Members have enacted or deployed measures to crack down on the sharing of information about the pandemic. Under a March 2020 law enacted (and later withdrawn) in **Hungary**, anyone who "distorted" or published "false" information on the pandemic could face five years in jail. In **Türkiye**, fines were imposed on media outlets presenting critical coverage of official COVID-19 responses, and hundreds of people were arrested for publishing "provocative" posts about the coronavirus outbreak on social media. In the United States state of Texas, individuals were arrested for allegedly publishing false reports about coronavirus.

The right to access to information (ATI) has also been impeded by COVID-19 responses. In some OECD Members, such as **Colombia** and **Hungary**, authorities extended deadlines for responding to information requests, while in **Mexico**, a declaration suspended such deadlines altogether. Similarly, in the **US**, some state and local jurisdictions suspended deadlines for responding to public record requests or indicated that they planned not to respond to such requests during the pandemic.

At the same time, other OECD Members responded to the pandemic by actively sharing information. Scotland (United Kingdom) publicly shared its decision-making framework for determining the measures needed to curb the pandemic. **Portugal** developed a website, an application and a mass media campaign presenting information on the pandemic and government actions to address it. According to **Ireland**'s Freedom of Information website, officials were obliged to comply with the Freedom of Information Act, notwithstanding the pandemic. **France**, **Germany**, **Italy**, **Romania** and **Sweden** undertook steps to make information about the pandemic available to people with disabilities, while **Austria** published its COVID-19 measures online in 14 languages.

The right to privacy

Many OECD Members deployed surveillance measures and authorities to respond to the pandemic in a way that significantly interferes with the right to privacy. The state of Western Australia allowed authorities to install surveillance devices in homes and directed people to wear monitoring devices to ensure compliance by those required to isolate. In **Poland**, the government launched a cell phone application (app) using facial recognition technology that allows police to monitor individuals' compliance with quarantine measures. In **Mexico**, authorities required telephone companies to provide access to cell phone antennas, so that officials could monitor the movements of persons in Mexico City and assess compliance with isolation instructions.

Other OECD Members, in contrast, prioritised privacy and transparency in deploying surveillance technology to curb the spread of COVID-19. In **Norway**, authorities worked with a private company to develop an app that warns users if they have had contact with someone infected by COVID-19. Though the app shares movement data with the authorities, the data are anonymous, the use of the app is voluntary, users receive clear information about the purpose, storage and nature of the data collected and users can delete their data at any time. Similarly, in the **Netherlands**, a law regulating the use of a COVID-19 app prescribes how data may be processed by the app and how they will be used. The law also provides that the use of the app must be voluntary and makes it illegal to force anyone to use the app.

ICNL recommendations for governments

In deploying emergency measures to respond to the COVID-19 pandemic and other future crises in the future, the ICNL encourages governments to:

- Limit emergency measures in duration to a maximum of 30 or 60 days and make them subject to extension only upon legislative approval.
- Include reasonable exceptions for restrictions on assembly and movement.

- Disseminate accurate information about COVID-19 and responsive measures through a variety of platforms and in multiple languages.
- Publicise official documents describing their responsive measures, mandate proactive disclosure of official information and establish systems for individuals and groups to request information from public bodies.
- Prioritise privacy, transparency, public consultation and narrow limits when using digital surveillance technology based on personal data.
- Establish procedures to review emergency measures affecting civic freedoms in consultation with civil society, and to relax and remove these measures as soon as they are no longer necessary under the prevailing circumstances.

Protections for civic freedoms are essential to empowering civil society and ensuring a robust recovery from COVID-19. Emergency measures should be rights-respecting, time-limited and maintained only so long as they are necessary. Governments must work with civil society and affected communities to ensure that civic space is restored after the pandemic and preserved in future emergencies.

1. These were variously identified as “states of emergency”, “states of crisis”, “states of catastrophe” or “states of danger”.

2.2. Discrimination as an obstacle to effective and inclusive civic participation

Equality and non-discrimination are cross-cutting themes in the OECD’s civic space work, as both are essential preconditions for inclusive, responsive and effective democratic participation on an equal basis with others. For the purposes of this report, discrimination is defined as “the unjust or prejudicial treatment of different categories of people”. Discrimination can affect citizens’ trust, in addition to their ability and willingness to engage with state institutions if they feel undervalued, excluded, unprotected or threatened. As such, all forms of discrimination can affect individuals’ ability or willingness to freely express themselves or to assemble and influence public decision making.

Discrimination covers a wide spectrum, from unintentional unequal treatment or micro-aggressions to forms of indirect discrimination,[63] direct discrimination, overt harassment and verbal and physical attacks. Numerous international instruments and national laws protect individuals from discrimination and promote general principles of equal treatment for all. General international human rights instruments ensure human rights and freedoms for all individuals, without distinction or discrimination of any kind or on any ground[64] (ECtHR, 2013[99]; IACHR, 1969[100]; UN, 1966[101]; ACHPR, 1986[102]).

At the same time, the UN Human Rights Committee has observed that unequal treatment does not constitute discrimination if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose legitimate under the International Covenant on Civil and Political Rights (ICCPR). Regional human rights courts in Europe and the Americas have provided similar definitions and differentiations in relation to discrimination, as has relevant EU law.[65] Additionally, the UN Human Rights Committee has recognised that the principle of equality sometimes requires state parties to take affirmative action to diminish or eliminate conditions that cause or help to perpetuate discrimination. It notes that where general conditions of a section of a population prevent or impair their enjoyment of human rights, the state should take specific action to correct those conditions. This may involve granting temporary preferential treatment to this section of the population in specific matters, as compared with the rest of the population. The UN Human Rights Committee emphasises that as long as such action is needed to correct discrimination, it is a case of legitimate differentiation.[66]

International instruments adopted to combat racial or gender discrimination, or discrimination based on disability provide for exceptions in various situations mentioned in the Survey on Open Government, primarily with respect to situations where states distinguish between citizens and non-citizens or on the basis of nationality,[67] or where state measures aim to achieve substantive equality between men and women or other groups.[68]

Box 2.3. Exclusion and levels of trust

2021 OECD Survey on Drivers of Trust in Public Institutions

The 2021 OECD Survey on Drivers of Trust in Public Institutions finds that low levels of trust in government and public institutions are often related to perceptions of vulnerability and being left behind economically, socially and politically. People's personal financial concerns, perceptions of relatively lower status in society and feeling excluded from government decision making thus negatively influence trust in government.

As regards the correlation between socio-economic status and levels of trust in governments, the trust survey illustrates that people with higher levels of education or higher levels of income also tend to have higher trust in their national government. While the average level of trust for those with the highest levels of education (university level/tertiary) is 48.0%, the level of trust for those with medium levels of education (upper secondary education, i.e. high school) is 39.9%.

The survey also finds a correlation between social status and levels of trust in government. People who report a lower perceived social status (measured as reported position in society, relative to others) also report a lower level of trust in the national government. On average across OECD Members, the trust gap between those who consider themselves to have a relatively higher social status and those with a low social status is around 22.9 percentage points, a value much higher than the difference between actual reported income or education.

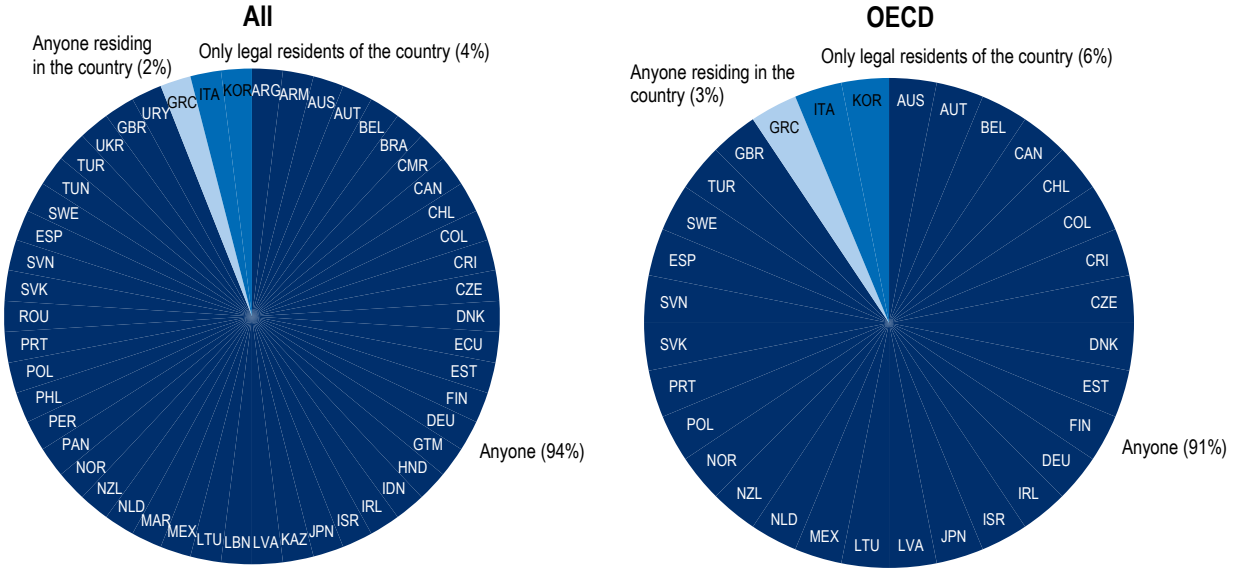
Source: OECD (2022[103]), *Building Trust to Reinforce Democracy: Main Findings from the 2021 OECD Survey on Drivers of Trust in Public Institutions*, Building Trust in Public Institutions, OECD Publishing, Paris, https://doi.org/10.1787/b407f99c-en.

2.2.1. National legal frameworks governing discrimination

Legislation in all respondents to the OECD Survey on Open Government explicitly states that all persons are equal in law and protected from different forms of discrimination in international, constitutional and national legal frameworks. As illustrated by Figure 2.12, in 94% of all respondents and 91% of OECD respondents, relevant legislation protects anyone (meaning anyone physically present in a country, even irregularly) from discrimination. This corresponds to only three respondents not affording this right to anyone.

Figure 2.12. Legal entitlement to protection against discrimination, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



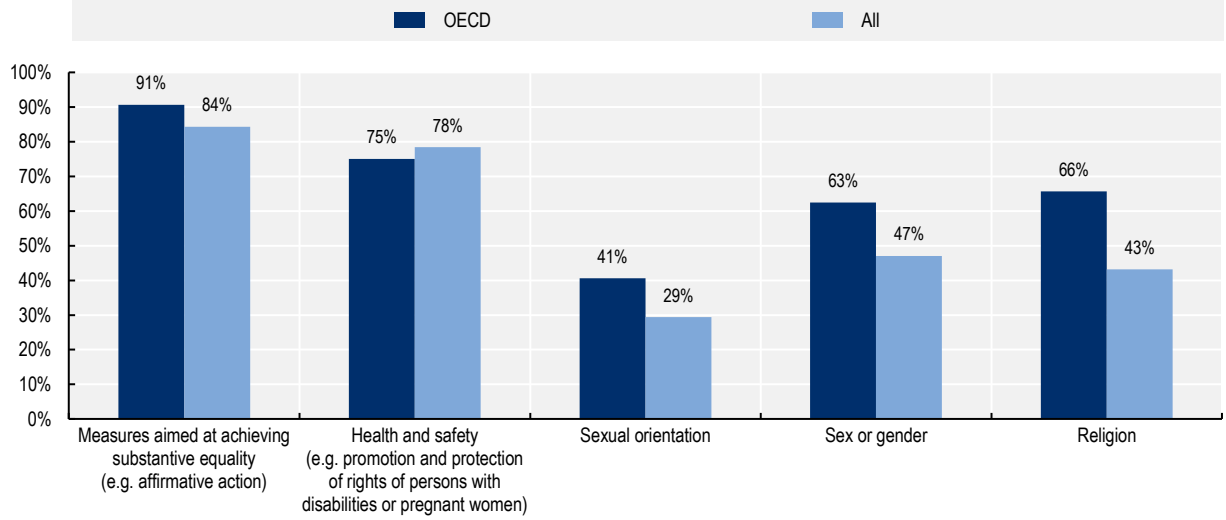
Note: "All" refers to 50 respondents (32 OECD Members and 18 non-Members). Data on Morocco and Slovenia are based on OECD desk research and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/jr1n57

In line with international guidance, in domestic legislation, exceptions, exemptions and conditions to protection from discrimination are found in a variety of areas (Figure 2.13).

Figure 2.13. Legally mandated exceptions to protection against discrimination, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (32 OECD Members and 19 non-Members). Data on Brazil, Colombia, Denmark, Dominican Republic, Guatemala, Honduras, Ireland, Korea, Mexico, Poland and Slovenia are based on OECD desk research for at least one of the categories and were shared with them for validation. Data on religion in all EU Member states are based on OECD desk research and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/d5nx39

Figure 2.13 shows that 84% of all respondents and 91% of OECD respondents state in their constitutional and/or anti-discrimination legislation that measures aiming to achieve substantive equality or protection (e.g. affirmative action) for disadvantaged groups will not be considered discrimination. Health and safety concerns, including the promotion and protection of persons with disabilities or pregnant women, or cases where occupational requirements or reasonable justifications allow distinctions based on disability, are also explicitly mentioned in constitutional, anti-discrimination or labour legislation in 78% of all respondents and 75% of OECD respondents.

Most respondents' constitutions permit differences in treatment between citizens and non-citizens or nationals and non-nationals based on reasonable grounds, or more specifically for certain rights, e.g. regarding the right to vote, be elected to or hold public office, different forms of political participation or certain aspects of freedom of association. Furthermore, 43% of all respondents and 66% of OECD respondents allow differences in treatment on religious grounds if these are reasonable and justifiable, notably in the employment sector in cases where a religion is considered a genuine occupational requirement (Figure 2.13). Likewise, 47% of all respondents and 63% of OECD respondents have legal provisions allowing differential treatment based on sex or gender or to accelerate gender equality.

Figure 2.13 also shows that laws in 29% of all respondents and 41% of OECD respondents, foresee affirmative action for persons based on their sexual orientation and do not consider this kind of distinction to be discrimination. For example, **Belgium** includes a number of protected characteristics in its national legislation, including sexual orientation. Similarly, in **Canada**, the law permits measures aimed at the promotion and protection of the rights of vulnerable or marginalised groups, where this is, among others, because of their sexual orientation or gender. In **Chile**, legislation allows distinctions, exclusions or restrictions based on protected grounds, including sexual orientation, that are reasonable and states that these shall be considered justifiable in the legitimate exercise of another fundamental right, in particular private life, religion or belief, education, freedom of expression, freedom of association, right to work or economic development.

Overall, there is a trend towards making anti-discrimination legislation more comprehensive and in recognising different groups that are affected. In recent years, many EU member states have rendered their laws more comprehensive, in the field of ethnic or racial discrimination, for example (EC, 2019[104]). **Ireland** formally recognised Travellers as an ethnic group in 2017, meaning that they are covered under that ground, as well as under the separate ground of being part of the Traveller community, under relevant anti-discrimination legislation. Some legislative improvements in EU countries likewise aim to enhance equal treatment of persons with disabilities, with laws and high court decisions attesting to a wide interpretation of the definition of disability (EC, 2019[104]). **Uruguay** also adopted a law in 2018 promoting employment opportunities for persons with disabilities. In 2018, **Tunisia** passed a law on eliminating all forms of racial discrimination.

Countries in Latin American and the Caribbean have adopted more gender-responsive legal frameworks in recent years. These include raising the legal age for marriage and passing legislation that protects women against more types of violence, including femicide, as found by the *SIGI 2020 Regional Report for Latin America and the Caribbean* (Box 2.4) (OECD, 2020[105]).[69] Legal frameworks have also been strengthened to promote women's political participation at the national and local levels (OECD, 2020[105]),[70] in particular via political electoral laws aiming to promote gender parity (UN Women, 2021[106]).

Key measures to consider on legal frameworks to counter discrimination

- Regularly reviewing policies and legislation and their effects, to assess and remedy potentially negative consequences for individuals' right to protection from discrimination, and to ensure that such frameworks are in line with international guidance.

- Institutionalising the monitoring of discrimination, including discriminatory violence, targeting at-risk groups to monitor trends and develop evidence-based, well-resourced strategies to counter it.

- Adopting comprehensive regulatory or voluntary measures to promote diversity in parliamentary and executive bodies, as well as the public sector, including through affirmative action, parity laws, targets, disclosure requirements and other guidance so that the conditions that perpetuate discrimination are diminished. Considering penalties for non-compliance can be important to ensure the effectiveness of such measures.

Box 2.4. Discrimination and violence targeting women's civic rights

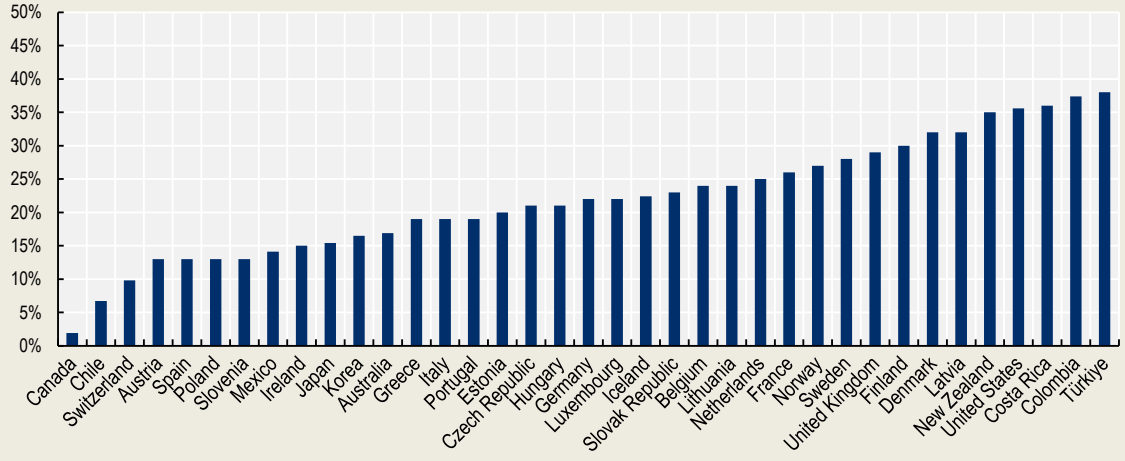
Despite significant progress in OECD Members in recent decades, so-called "traditional" values about women and their place in society, women's economic dependence on men and gender stereotyping remain central barriers preventing women's equal engagement in public life, often reducing women's opportunities to engage in civic activism (OECD, 2019[107]).

While there has been increased high-level attention on promoting gender equality in recent years with a majority of OECD Members introducing gender equality strategies, the overall trend across the OECD indicates that countries continue to address equality issues as part of social policy. This often results in limited opportunities to influence a whole-of-government response to gender equality needs, the absence of systematic collection of gender-disaggregated data across policy sectors and very limited mandates for the centre of government to support gender mainstreaming (OECD, 2019[108]).

Across OECD Members, an average of 22% of women experience violence throughout their lifetimes, rising to 30% or more in 8 OECD Members (OECD, 2019[109]) (Figure 2.14).[1]

Figure 2.14. Prevalence of violence against women during their lifetimes, 2019

Percentage of OECD Members based on data from the OECD International Development Statistics, 2019 or latest available year



Note: The graph consists of 37 OECD Members.
Source: OECD (2019[109]), "Violence against women", https://data.oecd.org/inequality/violence-against-women.htm.

The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association has highlighted that women's rights to freedom of peaceful assembly and of association are mediated through their access to and safety in public spaces, noting that a significantly greater proportion of women than men report altering or limiting their activities and travel outside their homes due to the risk and occurrence of sexual harassment in the street and on public transport, and a heightened risk after dark (UN, 2020[110]). In EU member states, 83% of women aged between 16 and 29 limit where they go or avoid certain places to protect themselves (FRA, 2021[111]). However, the UN Working group on the Issue of Discrimination against Women in Law and in Practice has found that only very few states have enacted laws prohibiting sexual harassment in public places (UN, 2014[112]).

Oppression, harassment, intimidation and violence against women in the private sphere as well as in public can create obstacles to women's participation in collective actions. Any type of gender violence can instil fear and humiliation and impede meaningful access to public spaces for association and assembly. Moreover, in recent years, a global trend of growing hostilities and attacks targeting women activists worldwide has been observed, including in OECD Members (CIVICUS, 2021[113]). A renewed emphasis on anti-feminist narratives has been fuelling efforts to weaken hard-won progress and has resulted in women facing violations of their rights to peaceful assembly and association, both on and off line (UN, 2018[114]; 2020[110]).

Despite this, women activists and feminist protest movements have achieved significant visibility in recent years in national, regional and transnational movements, with, for example, #MeToo, #WhyLoiter, #NiUnaMenos (the intergenerational *Marea Verde* [Green Wave] movement in Argentina) and the "Rapist in your path" performance protests in Argentina, Bolivia, Brazil, Chile and Peru. A wide range of issues is animating these protests, including: the failure to effectively tackle violence against women and gender inequality more broadly; reproductive rights; climate justice; and corruption.

1. The "Violence against women" indicator presents data on: Attitudes toward violence: the percentage of women who agree that a husband/partner is justified in beating his wife/partner under certain circumstances; Prevalence of violence in the lifetime: the percentage of women who have experienced physical and/or sexual violence from an intimate partner at some time in their life; Laws on domestic violence: whether the legal framework offers women legal protection from domestic violence.
Laws on domestic violence are presented as values ranging from 0 to 1, where 0 means that laws or practices do not discriminate against women's rights and 1 means laws or practices fully discriminate against women's rights; see (OECD, 2019[109]).
Source: OECD (2019[107]), *SIGI 2019 Regional Report for Eurasia*, https://doi.org/10.1787/f6dfa21d-en; OECD (2019[109]), "Violence against women", https://data.oecd.org/inequality/violence-against-women.htm; United Nations General Assembly (2020[110]), *Rights to Freedom of Peaceful Assembly and of Association,* http://undocs.org/A/75/184*;* EU Agency for Fundamental Rights (2021[111]), *Crime, Safety and Victims' Rights – Fundamental Rights Survey*, https://fra.europa.eu/en/publication/2021/fundamental-rights-survey-crime; United Nations General Assembly (2014[112]), *Report of the Working Group on the Issue of Discrimination Against Women in Law and in Practice*, https://undocs.org/en/A/HRC/26/39; CIVICUS (2021[113]), "Called a prostitute by the prime minister, a Slovenian journalist tells her story", https://globalvoices.org/2021/03/09/called-a-prostitute-by-the-prime-minister-a-slovenian-journalist-tells-her-story/; Nazneen, S. and A. Okech (2021[115]), "Introduction: Feminist protest and politics in a world in crisis", https://doi.org/10.1080/13552074.2021.2005358.

2.2.2. Implementation challenges and opportunities, as identified by CSOs and other stakeholders

At the global level, UN human rights bodies have consistently lamented the ongoing harmful exclusion and differential treatment of different groups including: women (UN, 2018[114]), Indigenous people (UN, 2018[116]; 2015[117]; 2020[118]); older persons (UN, 2021[119]); LGBTI persons (UN, 2020[120]); persons with disabilities (UN, 2016[121]); migrants (UN, 2021[122]); and systemic discrimination against certain identifiable groups of people on the basis of their race, colour, descent or national or ethnic origin (UN, 2020[123]; 2019[124]; FRA, 2020[125]), among others. Individuals can be discriminated against based on one or on multiple grounds, leading to layers of inequality and cumulative disadvantages, as well as to structural discrimination characterised by discriminatory practices that are embedded in and have become

commonplace throughout society. This can act as a direct obstacle to the inclusive participation of under-represented and marginalised groups in policy and decision making. Although discriminatory practices are illegal in most respondents, significant implementation challenges remain. Victimisation surveys show that while attitudes towards some groups have improved over time, significant prejudice against certain groups remains. While legal protection for gender equality and the rights of LGBTI people has grown in respondents over the past decade (OECD, 2019[126]) for example, there is still work to be done (Box 2.5). Attitudes towards migrants and ethnic and other minorities have become more polarised and discriminatory attitudes prevail in several countries (OECD, 2020[127]; Eurobarometer, 2019[128]). A survey by the EU Agency for Fundamental Rights (FRA) (2017[129]) found that almost one in four migrants and ethnic minorities in the EU felt discriminated against due to their ethnic or migrant background. Furthermore, 30% of people of African descent have experienced racist harassment, with rates varying from 21% in the **United Kingdom** to 63% in **Finland** (FRA, 2018[130]). Another survey by the FRA from 2021 found that 22% of persons who consider themselves to be part of an ethnic minority in the EU were stopped by the police in the 12 months before the survey, as opposed to 13% of people who do not consider themselves to be part of such a minority (FRA, 2021[131]). In the context of the COVID-19 pandemic, human rights groups (Human Rights Watch, 2021[132]; Pew Research Center, 2020[133]; Stop AAPI Hate, 2021[134]) and UN human rights bodies (UN, 2020[135]; 2020[123]) have noted a rise in racially motivated discrimination around the world, including against people of Asian descent and migrants (UN, 2021[122]).

In the **United States**, about three-quarters of people of African and Asian descent and 58% of Hispanics say they have experienced discrimination due to their race or ethnicity, at least from time to time. According to one study, the majorities of both Black and White populations say Black people are treated less fairly than White people by the criminal justice system (87% of Black people vs. 61% of White people) and in dealings with police (84% vs. 63%) (Menasce Horowitz, 2019[136]). Across Latin America, 21% of Latin Americans feel discriminated against, with the highest rates in **Brazil** (39%), **Chile** (34%), **Bolivia** (33%) and **Argentina** (28%) (Latinobarómetro, 2021[137]). Significant gaps between Indigenous and non-Indigenous populations regarding socio-economic factors such as life expectancy, education, unemployment rates, income and mortality rates show the extent to which structural discrimination is embedded in these societies (ECLAC, 2016[138]; 2020[139]).[71]

Civil society representing the rights of certain groups can also be affected. Despite historic legal successes in many countries in recent years, CSOs advocating for LGTBI rights continue to face challenges in some countries, for example. Research indicates that such associations have increasingly been targeted by restrictions and smear campaigns. UN Special Rapporteurs (UN, 2014[140]; 2020[141]), the European Commission (EC) (2020[142]; 2021[143]; 2021[144]), the European Parliament (2022[145]) and the Council of Europe Commissioner for Human Rights (Mijatović, 2020[146]) have all raised concerns about the ability of CSOs protecting and advocating for the rights of LGBTI persons to freely exercise their right to freedom of association in recent years. In several countries, public authorities or politicians have stigmatised LGBTI activists by using offensive language under the guise of protecting minors and families (ILGA, 2020, pp. 145-163[147]). Even in countries where public authorities are supportive, LGBTI activists may experience threats and reprisals from third parties.

In its most extreme form, discrimination can lead to hate speech or hate crimes against targeted persons or groups. The OSCE/ODIHR hate crime data for 2021 reports 7 203 incidents of hate crimes, including based on racism, xenophobia, gender, disability or religion in 14 countries (OSCE, 2021[148]). However, research indicates that the majority of hate crimes are not reported and, in many countries, data are not published or disaggregated by different bias motivations (FRA, 2018[149]).

Practices adopted by countries to counter terrorism since the early 2000s have also had a disproportionate impact on individuals who experience stereotyping and discrimination due to race, ethnicity, religion and/or their migration status, including in OECD Members (ENAR, 2019[150]; Saferworld, 2021[151]). The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has raised concerns about discriminatory and racial profiling (CERD, 2020[152];

Choudhury, 2021[153]; Ní Aoláin, 2019[154]; UN, 2017[155]), which describes the practice by law enforcement authorities of undertaking arbitrary stops, searches, identity checks, investigations and arrests among specific – often minority – groups. In 2021, the FRA noted that discriminatory ethnic or racial profiling remained a persistent challenge in EU member states (2021[131]).

While all OECD Members collect information on some diversity proxies, such as country of birth, only a few gather additional information on race, ethnicity or Indigenous identity (Balestra and Fleischer, 2018[156]). The collection of data can help to improve understanding of the life experiences of disadvantaged or marginalised population groups to improve their well-being, thereby assisting government officials in understanding and developing initiatives to counter exclusion.

Box 2.5. Recent legal changes for LGBTI persons and persistent challenges in the law

Over the last two decades, OECD Members have introduced legislative reforms to provide greater protection to LGBTI persons (OECD, 2020[157]). A few OECD Members have initiated legal reforms to enhance the protection of intersex children in recent years. In 2021, non-consensual cosmetic surgeries performed on intersex children were outlawed in **Germany** and parliaments in **Austria** and **Belgium** adopted resolutions on the protection of intersex children from non-consensual and medically unnecessary treatments, while a similar ban was announced by the government in **Finland** (ILGA-Europe, 2022[158]).

The recognition of civil partnerships or same-sex marriage for LGBTI persons is another area where positive developments took place (ECRI, 2020[159]; ILGA, 2020[147]). Since 2001, an increasing number of countries have extended the definition of marriage to include same-sex couples, making same-sex marriage lawful in 28 countries worldwide (ILGA, 2020[147]). Since 2019, same-sex marriage was also legalised in **Chile** and **Ecuador**.

In 2019, a decision of the **Spanish** Constitutional Court found in favour of transsexual minors regarding their ability to have their gender identity legally recognised. The Constitutional Court of **Lithuania** ruled in 2019 that the constitution, while not specifically mentioning sexual orientation as a protected ground, nevertheless also covered sexual orientation, based on the principles of protection of personal dignity and equality before the law (EC, 2019[160]). This appears to follow a wider European trend of recognising sexual orientation as a protected characteristic (EC, 2019[104]), and a worldwide trend of passing legislation that allows same-sex marriages (Council on Foreign Relations, 2021[161]; BBC News, 2021[162]; CNN, 2021[163]). In **Uruguay,** comprehensive legislation for transgender persons, protecting their right to gender identity was adopted in 2018.

Several OECD Members and non-Members have also passed or enhanced legislation that legally recognises different non-binary genders (ILGA, 2021[164]). In addition, a number of OECD Members and non-Members, including **Brazil**, **Chile and Germany**, in addition to several territories, provinces and regions of **Australia**, **Canada**, **Spain** and the **United States**, have banned different kinds of "conversion therapy" for LGBTI persons, a discredited practice involving a wide array of measures attempting to alter a person's sexual orientation (Stonewall, 2021[165]). In the **Netherlands**, legislation was amended in 2020, obliging all Dutch schools to ensure that LGBTI youth are respected and protected (ILGA, 2021[164]). More than one-third of OECD Members have launched initiatives to create LGBTI-inclusive environments in schools (OECD, 2020[157]).

Persistent challenges

However, despite significant progress, LGBTI persons are still discriminated against in explicit and non-explicit legal provisions. While in some respondents discrimination against homosexuals persists in law, in others, new legislation has been adopted, restricting the rights of transgender and intersex persons.

Laws limiting sex education curriculums and laws prohibiting the promotion of homosexuality, in addition to laws restricting marriage and adoption for LGBTI people, are also in place in a number of OECD Members.

A recent review in the **United States** concluded that an unprecedented number of states have enacted anti-LGBTI measures into law, for example (Human Rights Campaign, 2021[166]). In its 2020 Annual Report, the Council of Europe's Commission against Racism and Intolerance (ECRI) also noted that new restrictive legislation had likewise been adopted in certain European countries that made it impossible for transgender and intersex persons to legally change their gender (ECRI, 2020[159]). In July 2021, the EC launched legal proceedings against **Hungary** and **Poland** for what it described as "violations of fundamental rights of LGBTI people" (EC, 2021[167]). A law in **Lithuania** outlaws the propagation of same-sex relations on the basis that they adversely affect minors (ILGA, 2021[164]). In three respondents to the OECD Survey on Open Government, homosexuality is criminalised and can be penalised with imprisonment of up to three of five years.

Source: OECD (2019[126]), *Society at a Glance 2019: OECD Social Indicators,* https://doi.org/10.1787/soc_glance-2019-en; Eurobarometer (2019[128]), *Special Eurobarometer 493. Discrimination in the EU (including LGBTI)*, https://data.europa.eu/data/datasets/s2251_91_4_493_eng; EU Agency for Fundamental Rights (2013[168]), *European Union Lesbian, Gay, Bisexual and Transgender Survey: Results at a Glance,* https://fra.europa.eu/sites/default/files/eu-lgbt-survey-results-at-a-glance_en.pdf; OECD (2020[157]), *Over the Rainbow? The Road to LGBTI Inclusion*, https://doi.org/10.1787/8d2fd1a8-en; International Lesbian, Gay, Bisexual, Trans and Intersex Association (2020[147]), *State-Sponsored Homophobia 2020: Global Legislation Overview*, pp. 145-163, https://ilga.org/state-sponsored-homophobia-report; Government of Italy (2020[169]), *Decreto Tavolo LGBT,* http://www.pariopportunita.gov.it/wp-content/uploads/2020/05/Decreto-Tavolo-LGBT.pdf; OCSE (2019[170]), *2019 Hate Crime Data*, https://hatecrime.osce.org/infocus/2019-hate-crime-data-now-available.

Key measures to consider in addressing implementation challenges for combatting discrimination

- Recognise social and economic inequalities that lead to disenfranchisement and mistrust as potential obstacles to effective civic participation and raise awareness on the negative impact of discrimination on social cohesion, civic participation and the exercise of civic freedoms.

- Envisage developing institutionalised, inclusive, targeted and accessible processes that allow under-represented and marginalised persons and groups to participate in policy and decision making; support the capacities of representative organisations and mechanisms in all stages of the policy-making cycle to benefit from their insights and expertise, while avoiding policy capture.

- Enhancing data collection in order to assess the well-being of minority and marginalised populations and to develop targeted non-discrimination policies, laws and programmes.

- Enhancing oversight over and training of law enforcement and other public bodies, to ensure that cases of racial profiling, harassment and systemic discrimination against certain groups are met with swift and decisive responses that demonstrate the state's willingness to provide remedies for such actions.

2.3. Protecting the physical safety of human rights defenders

Human rights defenders (HRDs) play an essential role in democratic societies in promoting and protecting human rights and drawing public attention to violations when they occur (Section 4.3 in Chapter 4; Box 4.1; Section 4.2.2 in Chapter 4; and Box 2.6). While this often brings them gratitude and recognition, this type of work can also expose them to harm, ranging from stigmatisation and public harassment to violent attacks and even killings.

The UN General Assembly considers any person promoting, protecting or realising human rights to be an HRD (UN, 1999[171]); thus, this distinction is related more to persons' actions than to their professional, societal or other backgrounds (IACHR, 2017[172]). Common areas of engagement for HRDs range from

promoting and protecting key human rights such as the right to life, freedom from torture or ill-treatment, freedom from discrimination or environmental and land rights, to education, housing, property or healthcare rights. They may also defend the rights of categories of certain persons, such as women, children, refugees and internally displaced persons, Indigenous communities, LGBTI persons, persons with disabilities or other minorities.

According to the ICCPR (Articles 2, 6) and guidance in the non-binding UN Declaration on Human Rights Defenders (Articles 1, 2, 5, 12 and 13), states have a responsibility and duty to effectively protect everyone who, through peaceful means, reacts against or opposes violations of human rights and fundamental freedoms. States also have a duty to protect the right to life and are obligated to enact a legal framework and other measures to ensure the full enjoyment of that right. This requires them to take special protective measures for persons in vulnerable situations who are at risk due to specific threats or pre-existing patterns of violence and must create and maintain a safe and enabling environment for defending human rights.

Though the work of HRDs is recognised as necessary and important in many countries where they operate, there are numerous examples in OECD Members and beyond where HRDs are targeted and harassed, both on and off line (Freedom Online Coalition, 2019[173]), including via Strategic Lawsuits against Public Participation (SLAPPs) and other lawsuits (Section 5.2.3 in Chapter 5). Public smear campaigns in the media often demonise and stigmatise HRDs, leaving them vulnerable to a variety of attacks. The perpetrators of such acts are often powerful interest groups, large businesses or criminal organisations (Forst, 2019[174]; OHCHR, 2004[175]; BHRRC, 2022[176]). States and their representatives may have HRD programmes or laws in place, but a variety of challenges, such as a lack of resources, remote territories, an absent rule of law, overly bureaucratic regulations, negative public perceptions of certain HRDs and scant political stability and accountability, mean that, at times, they are unable to adequately protect them.

2.3.1. National legal frameworks and related programmes to protect human rights defenders

Recognising the high number of killings and dangers faced by HRDs on their territories, certain countries, such as **Brazil**, **Colombia, Honduras** and **Mexico**, have passed legislation and adopted action plans reaffirming respect for the human rights of HRDs and establishing special protection mechanisms for them (Government of Colombia, 2018[177]; Government of Honduras, 2015[178]; Ministry of Human Rights, 2018[179]; Government of Mexico, 2012[180]). These include, among others, special units within the executive providing individualised protection measures, general monitoring and centralised early-warning systems that identify risks in a timely manner, as well as rapid-response structures, state bodies streamlining prevention and protection measures, financial trust funds and legal remedies. In addition to laws, some countries, such as the **Netherlands** and **Sweden**, have provided special support programmes for at-risk individuals or CSOs (Government of Sweden, 2019[181]; 2020[182]). **Armenia**'s recently adopted national strategy for human rights protection also envisages drafting legislation to protect HRDs (Government of Armenia, n.d.[183]). **Mexico** gathers data on the number of journalists, HRDs and trade unionists assisted by public security institutions (INEGI, 2022[184]).

These countries remain the exception, however. The majority of countries, both within the OECD and beyond, have not passed laws or policies dedicated to HRDs specifically. In these countries, HRDs are, as other individuals, protected by the general laws of the state, including criminal legislation, that apply to all individuals and the usual human rights protection mechanisms found in many countries. Crucially, whether or not the specialised laws or mechanisms provide sufficient and effective protection for HRDs often depends on the overall rule of law situation in a given country, including the resources, political will and effectiveness of law enforcement, the independence and effectiveness of courts, the stability of state institutions in general, and how freely the media and CSOs operate as a whole (Lawlor, 2020[185]). Moreover, it is essential that these mechanisms are organised in a manner that allows for timely and unbureaucratic support for HRDs in need of help.

Protection for human rights defenders in third countries

A number of OECD Members have also introduced guidelines, policies or programmes to help protect HRDs in other countries.[72] Notably, **Canada** and **Norway** have issued guidelines to support and protect HRDs internationally, through monitoring, advocacy and financial assistance (Government of Canada[186]; Government of Norway, 2010[187]). At the regional level, the EU has passed guidelines for enhancing support to HRDs as part of its human rights external relations policy, encouraging EU missions to adopt a proactive approach towards HRDs and to periodically report on threats or attacks (EU, 2008[188]). The EC also provides aid directly to HRDs via a special financial instrument, allowing it to do so without informing the government of the country in question or demanding its prior consent (EU, 2018[189]). In addition, the EU has installed the Human Rights Defenders Mechanism (ProtectDefenders.eu[190]) that includes the possibility to relocate HRDs at risk, monitor the situation of HRDs and provide training, financial support and capacity building.

The possibility of relocation of threatened HRDs in third countries is provided by countries such as **Germany**, the **Netherlands** and **Norway** (ENNHRI, 2020[191]; Institut fur Auslandsbeziehungen[192]; Justice and Peace, n.d.[193]; Government of Norway, 2010[187]). The **Netherlands** also provides financial support for at-risk HRDs (Government of the Netherlands[194]). Likewise, the **United States** government provides emergency assistance for HRDs who are threatened (US Government[195]).

Beyond financial assistance and relocation possibilities, many OECD Members also engage in public diplomacy efforts, including by encouraging host governments to engage constructively with HRDs and consider their concerns. The *EU Guidelines on Human Rights Defenders* recommend increasing public recognition of HRDs through publicity and in-country visits, sending observers to trials of HRDs and visiting them in custody, issuing public statements and discussing HRD cases during high-level visits (EU, 2008[188]).

Box 2.6. National legal frameworks to protect whistleblowers

For the purposes of this report, a whistleblower is defined for this report as an employee who discloses "to competent authorities in good faith and on reasonable grounds wrongdoing of whatever kind in the context of their workplace". The activities of whistleblowers can help report information on threats or harm to the public interest deriving from both the private and public sectors (CoE, 2014[196]; OECD, 2016[197]). The right to impart information, as part of the right to freedom of expression, can also cover the reporting of wrongdoing or other information in the public interest.[1] At the same time, such actions are likely to place these persons at risk; as they can be subjected to harassment, intimidation, investigation and prosecution (Kaye, 2015[198]). Therefore, international guidance urges countries to introduce appropriate measures to protect whistleblowers against unjustified treatment (UN, 2003[199]), as well as reporting channels, and to guarantee prompt investigations and guarantees of confidentiality (CoE, 2014[196]). There is an additional obligation for EU countries to transpose the 2019 Whistleblower Protection Directive, on the protection of persons who report breaches of EU law, into national legislation (EU, 2019[200]).

In order to provide effective protection, whistleblower legislation should have a broad scope and provide adequate protection mechanisms against retaliation as a consequence of the act of whistleblowing, and sanctions and remedies (OECD, 2012[201]). Such mechanisms can include protection at the workplace but also external protection via different state and independent bodies for whistleblowers, as well as reporting procedures within and outside the workplace (Transparency International, 2018[202]).

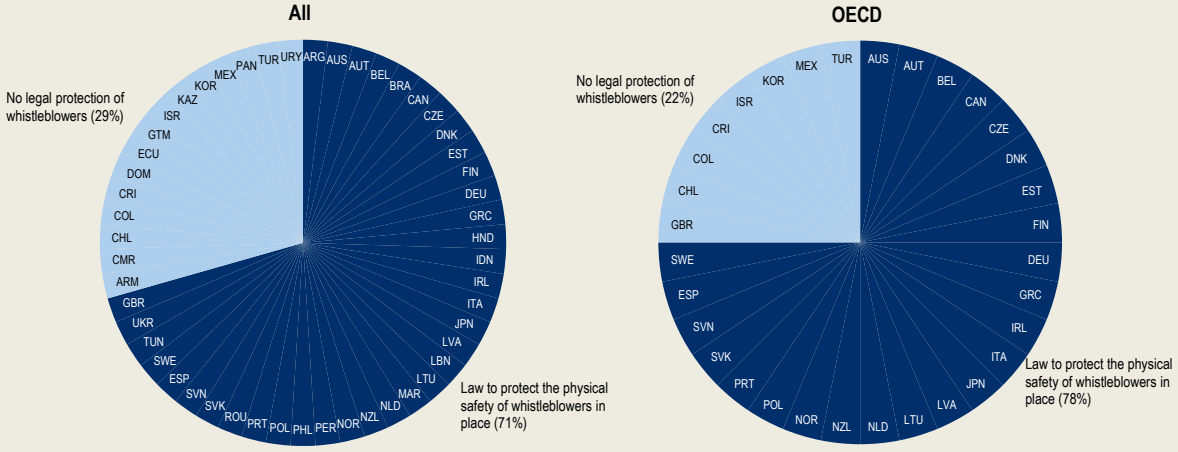
Figure 2.15 illustrates that in 71% of all respondents and 78% of OECD respondents, whistleblowers are either protected by legislation or draft laws are pending (this includes cases of countries transposing the EU directive, which, however, only obliges member states to pass whistleblower legislation

concerning areas covered by EU law). The majority of OECD Members have legislation providing whistleblower protection in both the public and private sectors, which in most cases include procedures for disclosure of information on misconduct by the whistleblower to different bodies both within the workplace and beyond, mechanisms to protect whistleblowers from reprisals, and sanctions or damages for whistleblowers. Non-Members have confirmed that they have similar legislation that explicitly protects whistleblowers. In countries where there is no special legislation in place, laws on witness protection can protect whistleblowers in their roles as witnesses or defendants in ongoing criminal proceedings.

The 2016 OECD report *Committing to Effective Whistleblower Protection* (2016[197]) highlighted that relevant protection frameworks tend to be fragmented and ad hoc. While most OECD Members provide legal protection to whistleblowers in laws on anti-corruption, competition, companies, employment, public servants or in criminal codes, dedicated laws offer more legal clarity and streamline the processes and mechanisms involved in disclosing wrongdoing (OECD, 2016[197]). A 2022 Council of Europe report evaluating whistleblower legislation noted some good practices, notably laws giving special whistleblower centres, law enforcement authorities or national human rights institutions, among others, powers to investigate reprisals, make recommendations to employers to remedy detrimental treatment, make submissions on behalf of a whistleblower to the competent courts and provide free legal aid (Myers, 2022[203]).

Figure 2.15. Laws to protect whistleblowers, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 51 respondents (32 OECD Members and 19 non-Members). Data on Argentina, Austria, Belgium, Cameroon, Czech Republic, Denmark, Ecuador, Finland, Germany, Greece, Ireland, Korea, Lithuania, Norway, the Philippines, Poland, Portugal, Slovenia, Spain and Uruguay are based on OECD desk research and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/g1pl0c

1. According to the case law of the European Court of Human Rights, there are six criteria that whistleblowing needs to fulfil in order to be protected by the right to freedom of expression/information under Article 10 of the ECHR (CoE, 2017[204]).

> ***Key measures to consider for the legal protection of human rights defenders***
>
> *Taking measures to decrease risk to the life or physical integrity of individuals, including by enacting legislation criminalising violence against individuals, in addition to legislation that explicitly protects the rights of HRDs, in line with national needs; consider backing up laws by effective law enforcement structures and redress mechanisms for victims.*

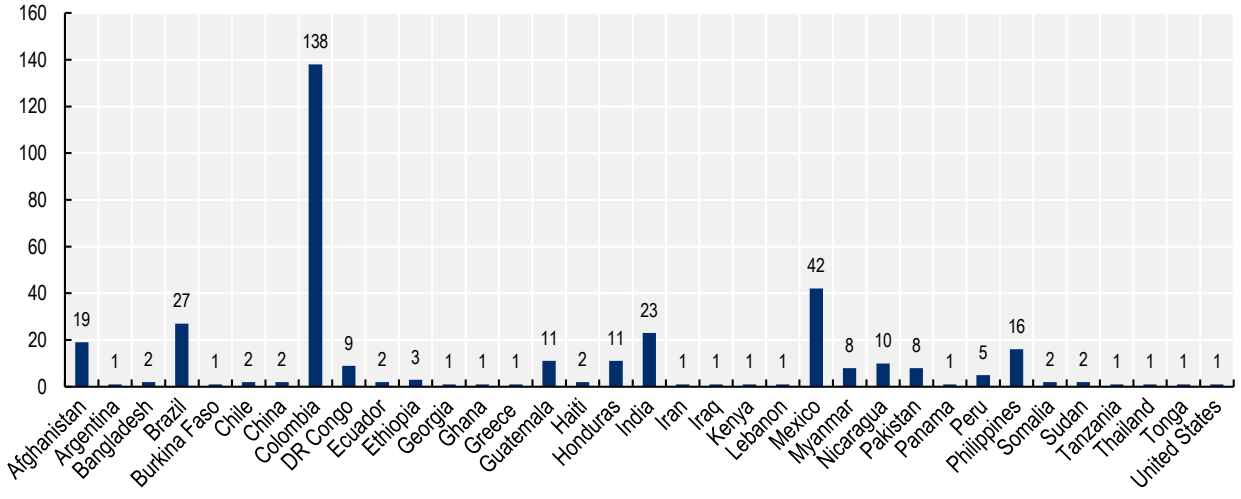
2.3.2. Implementation challenges and opportunities, as identified by CSOs and other stakeholders

According to the global watchdog Frontline Defenders, at least 358 HRDs were killed worldwide in 2021 (Frontline Defenders, 2022[205]), with 59% of killings targeting HRDs working on land, environmental or Indigenous peoples' rights. Between 2015 and 2020, a total of 1 323 HRDs have been killed, according to the UN Special Rapporteur on the situation of human rights defenders (Lawlor, 2020[185]).

In a call for action in 2020, the UN Secretary-General highlighted how threats to HRDs have become part of a wider attack on civil society and how HRDs and journalists, especially women, have experienced increasing threats (2020[206]). The UN Special Rapporteur on the situation of human rights defenders has emphasised that "[t]here is no more direct attack on civil society space than the killing of human rights defenders" (Lawlor, 2020[185]) and that killings are frequently preceded by death threats and aggressive on- and offline smear campaigns aimed at discrediting their work (Lawlor, 2020[185]).

Latin America, in particular, is the most affected continent with 250 killings of HRDs in 2021, making up 70% of the global total (Frontline Defenders, 2022[205]). In **Colombia,** the government-appointed Ombudsman for Human Rights recognises the critical situation for HRDs in the country, which has been further aggravated by the COVID-19 pandemic (Government of Colombia, 2020[207]). To address the situation, the National Protection Unit, established in 2011, provides risk assessments and recommends suitable protection measures for HRDs at risk and promotes strategies for effective investigation, prosecution, punishment and reparation (Government of Colombia, n.d.[208]). The mechanism had 1 141 HRDs placed under protection at the end of June 2020 (Government of Colombia, 2020[209]). Despite these efforts, 138 HRDs lost their lives in 2021, down from 177 in 2020, according to Frontline Defenders (Figure 2.16).

Figure 2.16. Reported killings of human rights defenders worldwide, 2021



Source: Frontline Defenders (2022[205]), *Global Analysis 2021*, https://www.frontlinedefenders.org/en/resource-publication/global-analysis-2021-0

Other Latin American countries that are particularly affected include **Brazil**, **Guatemala**, **Honduras** and **Mexico**, despite all having taken measures to protect HRDs. As a measure to improve the situation for HRDs in **Mexico**, the government enacted a law in 2012, establishing the Protection Mechanism for Human Rights Defenders and Journalists (Government of Mexico, 2012[180]). The mechanism was funded by a trust fund and includes elements of risk assessment and preventive and protection measures ranging from courses to improve personal security, observers to accompany HRDs and journalists under threat and the provision of technical security equipment to urgent measures such as evacuation, temporary relocation and bodyguards. The trust fund was reportedly terminated in 2020, generating uncertainty about the future of this mechanism. According to Frontline Defenders (2022[205]), 42 HRDs were killed in Mexico in 2021, more than doubling since the previous year.

Asia and the Pacific, and the Middle East and North Africa are the second and third most affected regions respectively. In Europe, national human rights institutions (NHRIs) have reported that HRDs are increasingly exposed to hate speech and attacks. NHRIs in Europe have noted cases ranging from violent physical attacks, threats and hate speech to public criticism of HRDs by the authorities. In some countries, they point to a less favourable environment for HRDs in recent years and some stress-specific obstacles for those supporting LGBTI+ people and migrants (ENNHRI, 2021[63]).

A number of actions can be taken by countries to protect HRDs including: enhancing support to existing general human rights and HRD-specific protection mechanisms; taking appropriate preventive measures to assist HRDs such as providing police protection or evacuation; establishing early-warning and rapid-response mechanisms to respond to threats; providing public support to HRDs by explicitly recognising the important role that they play in society; and adopting a zero-tolerance approach to any form of harassment, threats or attacks. Furthermore, monitoring and regular publishing of comprehensive, standardised, disaggregated data and analysis on cases of violence and killings can help to increase awareness.

> ***Key measures to consider on implementation challenges relating to the legal protection of HRDs***
>
> *Supporting HRDs, including those operating in non-Members, via public recognition of their work, practical support (e.g. protection mechanisms, funds, visas, asylum, shelter and security) and diplomacy, as needed, and ensure that programmes and initiatives are adequately funded, resourced and evaluated to assess their ongoing impact.*

2.4. Institutional protection: Mechanisms to counter violations of fundamental civic freedoms

State protection of civic freedoms is only effective if there are accessible mechanisms in place to counter violations of rights, both in law and in practice. These may include administrative proceedings, aimed at protecting individuals and organisations from the excessive use of powers that interfere with the exercise of their human rights and freedoms. In addition to these proceedings, a number of OECD Members, including **Denmark**, **Estonia, Norway** and **Portugal,** have administrative bodies such as police complaints bodies that deal more specifically with human rights violations. **Japan** has a human rights office under the auspices of the Ministry of Justice and **Colombia** has prosecutors under the Prosecutor-General's Office specialised in human rights complaints. Among non-Members, **Brazil, Ecuador** and **Panama** also have special prosecution sections or units dealing with human rights matters.

Among OECD Members, **Austria, Israel, Mexico, Portugal** and **Türkiye** have specialised complaints bodies located within their public administrations for anti-discrimination complaints and **Costa Rica** has a similar body for complaints relating to the human rights of women. **Lithuania** and **Mexico** have similar government authorities that deal with complaints concerning journalistic ethics and violations of the right to private life of individuals (usually in the context of data protection). Similarly, among non-Members,

Argentina has government bodies addressing complaints on discrimination issues, while the public administration in the **Dominican Republic** has a special mechanism for complaints concerning gender-based violence, and **Morocco** and the **Philippines** likewise have government bodies responsible for privacy complaints (Figure 2.17).

Although the court system is not always accessible or responsive to the specific legal and justice needs of people, it remains the main avenue for justice in cases of rights violations in all OECD Members. Different legal systems, for instance civil law versus common law countries, allow for different systems for the protection of rights within the justice systems. In certain OECD Members, however, notably in **Austria**, **Chile**, **Germany, Israel,** the **Slovak Republic**, **Spain** and **Türkiye**, constitutional courts are competent to review human rights complaints of individuals, provided that remedies have been exhausted before ordinary courts. **Chile** also allows special human rights complaints before appeals courts. In **Canada, New Zealand** and **Norway**, special human rights tribunals deal with complaints concerning discrimination. Likewise, in certain non-Members such as **Argentina** and **Ukraine**, special human rights complaints can also be made to the highest court. In addition, regional and international tribunals, as subsidiary bodies for the protection of human rights, play a substantial role. Notably, when states fail to provide effective protection, as set out in regional and international human rights treaties and only once all the national mechanisms for the protection of human rights have been exhausted.

2.4.1. Independent oversight and complaint mechanisms

Aside from bodies of the executive and courts, publicly funded independent oversight mechanisms are fundamental to protecting civic space. Many of these independent public institutions have individual complaints mechanisms set out in law (OECD, 2018[210]) (Box 2.7). Once an individual has submitted a complaint, these institutions review the case. In case the institution concludes that a human rights violation or case of abuse of powers has taken place, it may engage in different kinds of actions to resolve the case, depending on its respective mandate. In some countries, such institutions have additional power to take cases to court or to issue sanctions.

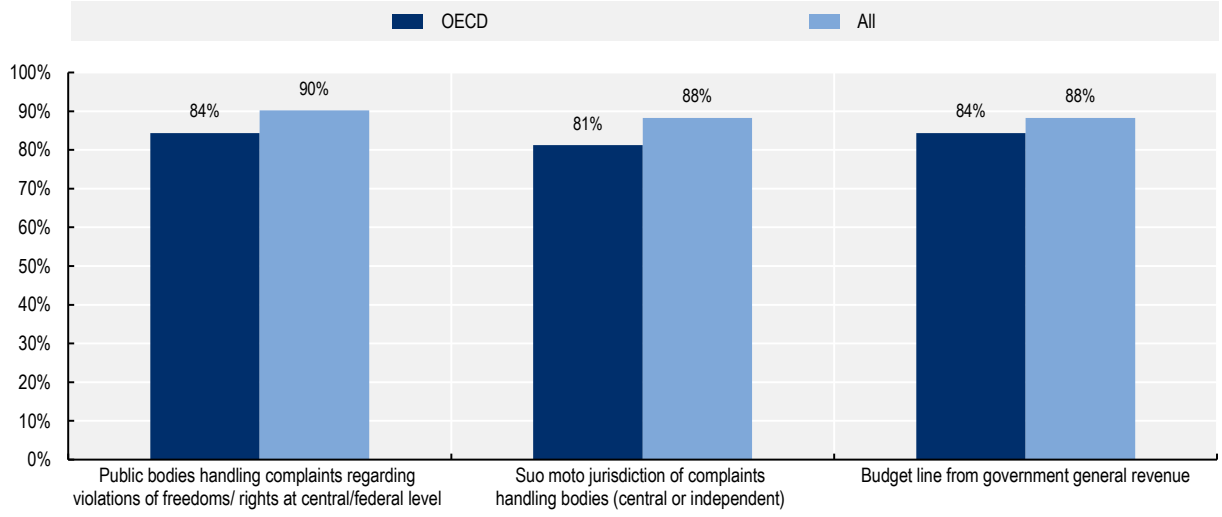
Figure 2.17 shows that 90% of all respondents and 84% of OECD respondents have established independent public institutions that address human rights complaints such as an NHRI, including ombudsperson offices. All respondents have passed specific legislation establishing human rights complaint or oversight mechanisms, while many also have set out the main elements of such institutions in their constitutions. In 88% of all respondents and 81% of OECD respondents, the independent public institution may initiate human rights investigations of its own accord (*suo moto*), regardless of whether an individual human rights complaint was received or not. This is crucial to ensure complete and consistent human rights protection in a country, as, in this way, human rights protection mechanisms can engage proactively in a given situation and do not depend on individuals to review alleged human rights violations that have come to their attention, especially in sensitive matters where individuals may fear negative consequences if they lodge a complaint. This role has been recognised in relation to ombuds institutions by the European Commission for Democracy through Law (Venice Commission), which has advised that ombudspersons should have discretionary power to investigate cases on their own initiative (CoE, 2019[211]).

As specified in the UN Principles relating to the Status of National Institutions (Paris Principles) sufficient funding is essential to ensure the smooth functioning of such institutions. Figure 2.17 illustrates that, in 88% of all respondents and 84% of OECD Members that have an independent public institution in place, government revenues are the main funding source, with a separate budget line to ensure a degree of financial independence from the government. To further ensure their financial independence from governments, certain OECD Members and non-Members, such as **Armenia,** the **Dominican Republic** and **Panama**, have also introduced special safeguards to protect NHRIs from unforeseen or unjustified budget cuts.

Disaggregation of data by such institutions in published reports facilitates their work; 53% of respondents declared that they undertook some data disaggregation, at least with respect to the nature of the complaints and the respondent administrative body. Only a small minority of these respondents confirmed that the data are disaggregated by age or gender, however. This kind of disaggregated data can provide valuable information on vulnerable and marginalised groups and help track discrimination and structural inequalities, providing the basis for evidence-based policy making. When collected regularly and disaggregated, such statistics allow policy makers to monitor trends and track progress in achieving goals towards equality, not only in relation to groups such as the elderly, men and women but also in relation to other potentially disadvantaged groups, such as minority communities or persons with disabilities.

Figure 2.17. Independent oversight and complaint mechanisms, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



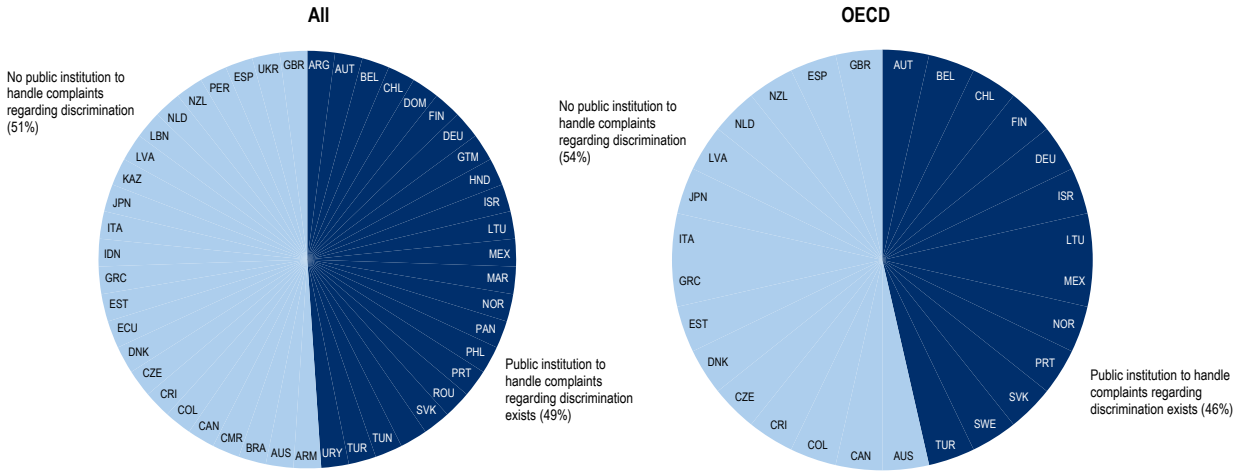
Note: "All" refers to 51 respondents (32 OECD Members and 19 non-Members). For the sub-question "Budget line from government general revenue", "All" refers to 48 respondents (30 OECD Members and 18 non-Members). Data on Austria, Guatemala, Ireland, Slovenia and Türkiye are based on OECD desk research for at least one of the categories and were shared with them for validation.
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/am0w9t

Figure 2.18 shows that 49% of all respondents and 46% of OECD respondents have separate oversight institutions that specialise in discrimination cases and promoting equality.

Figure 2.18. Institutions that specialise in discrimination cases, 2020

Percentage of OECD Members and non-Members that provided data in the OECD Survey on Open Government



Note: "All" refers to 47 respondents (28 OECD Members and 19 non-Members).
Source: 2020 OECD Survey on Open Government.

StatLink https://stat.link/rd1q7a

Box 2.7. Good practices in securing the independence of complaints/oversight mechanisms

The role of human rights complaints and/or oversight mechanisms is to examine complaints or other information to establish whether certain acts, laws or other regulatory acts have violated the human rights and fundamental freedoms of individuals. Part of a proper examination of such complaints necessarily involves a review of state actions, primarily actions of public administrations and other decision-making bodies affecting individuals or groups of individuals and their rights.

The independence of such public bodies is best achieved when the procedure for the appointment of the leaders or members of NHRIs is described in an official act outlining the specific duration of their mandates. The Venice Commission has recommended that the term of office of an ombudsman should be longer than the mandate of the appointing body and that, preferably, the term of office should be limited to a single term, or at a minimum, renewable only once (2022[212]).

The national laws of many OECD Members, such as **Austria**, **Chile**, the **Czech Republic**, **Estonia**, **Finland** and **Spain** and non-Members, such as **Argentina**, **Armenia**, **Cameroon**, **Morocco**, and the **Philippines**, indicate the specific duration of the relevant institution's mandate. Some OECD Members, namely **Austria,** the **Czech Republic, Portugal**, the **Slovak Republic** and **Türkiye,** and non-Members, such as **Argentina**, **Cameroon**, the **Dominican Republic** and **Romania**, seek to further strengthen the independent nature of such institutions by allowing the incumbent individual or members of a body to be re-appointed only once.

The manner in which the heads or members of such institutions are appointed and dismissed is also of consequence for their independence. The Paris Principles specify that appointment procedures should ensure the pluralist representation of social forces involved in the promotion and protection of human rights but note that government departments, if included, should only have an advisory capacity (ENNHRI, 1993[213]). In this context, Council of Europe and EU bodies have emphasised that the

selection and appointment process should be competency-based, transparent and participatory (CoE, 2019[211]), and that ombudspersons should preferably be appointed by a qualified parliamentary majority (CoE, 2016[214]).

In many OECD Members, the heads or members of NHRIs are appointed via a majority of the members of parliament. A number of OECD Members such as **Colombia, Mexico, Portugal, Slovenia, Spain** and **Türkiye,** as well as **Argentina, Armenia** and the **Dominican Republic** even require a qualified majority. In **Peru**, the process of nominating potential candidates for the head of an institution is initiated via an open call to the public and, in **Türkiye**, anyone matching the requisite eligibility criteria may apply. In **Uruguay**, certain CSOs may propose candidates to parliament, while in **Ecuador**, the same generally applies to CSOs and citizens. In **Mexico**, the competent senatorial committee conducts extensive consultations with social and human rights organisations prior to compiling a list of candidates.

In many respondents, relevant legislation also specifies the circumstances in which the respective head or members of the institution may be removed, which is in line with Council of Europe recommendations requiring an objective and impartial dismissal process with clearly defined terms set out in legislation]) (CoE, 2021[215]). In **Chile** and **Estonia**, the head or member may only be removed by decision of the Supreme Court.

Furthermore, it is crucial to create the necessary enabling environment for such institutions by providing state protection and support, including legal provisions granting staff functional immunity and guaranteeing the inviolability of relevant premises, in addition to ensuring that they do not face any form of reprisal or intimidation, including political pressure, harassment or unjustifiable budgetary limitations, as a result of activities undertaken in accordance with their respective mandates. Given that such institutions usually exercise a form of "soft power", it is also advisable to ensure that relevant laws oblige public bodies to co-operate with them.

Source: Council of Europe (2016[214]), *Recommendation CM/Rec(2016)4 of the Committee of Ministers to member States on the protection of journalism and safety of journalists and other media actors*, https://www.coe.int/en/web/freedom-expression/committee-of-ministers-adopted-texts/-/asset_publisher/aDXmrol0vvsU/content/recommendation-cm-rec-2016-4-of-the-committee-of-ministers-to-member-states-on-the-protection-of-journalism-and-safety-of-journalists-and-other-media-; ENNHRI (1993[213]), *UN Paris Principles and Accreditation*, http://ennhri.org/about-nhris/un-paris-principles-and-accreditation/; Council of Europe (2019[211]), *Principles on the Promotion and Protection of the Ombudsman Institution (the Venice Principles)*, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e.

> ***Key measures to consider on legal frameworks governing independent oversight and complaint mechanisms***
>
> *- Establishing and adequately resourcing independent public institutions that have a mandate to address human rights complaints and affording* suo moto *powers to such institutions.*

2.4.2. Implementation challenges and opportunities, as identified by CSOs and other stakeholders

More than half of the NHRIs or ombudsman offices worldwide reporting to UN human rights bodies in 2020 stated that they had adequate legislative frameworks and that they were receiving adequate financial resources that allowed them to work independently and efficiently (UN, 2017[216]). At the same time, some NHRIs in OECD Members have raised concerns about their ability to function independently from the executive.

In 2021, NHRIs in Europe, including those in **Belgium**, **Denmark**, **Finland**, **Germany**, **Ireland**, **Norway**, **Slovenia**, **Spain** and **Türkiye**, reported good co-operation with national authorities (ENNHRI, 2021[63]). Nevertheless, some NHRIs also highlighted issues with regard to the amount of time taken to implement their recommendations, including in **Belgium**, the **Czech Republic**, the **Slovak Republic**, **Slovenia** and

Ukraine. The effectiveness of consultations with governments was also raised in the **Czech Republic, Germany, Hungary, Luxembourg** and the **Slovak Republic,** including the absence of regular consultations with national governments in **Germany** and **Greece.**

Regional networks of NHRIs have also reported challenges due to negative public discourses, budget cuts, reprisals and intimidation against NHRIs in recent years, including in **Ecuador, Guatemala**, **Mexico**, the **Philippines** and **Poland** (GANHRI, 2020[217]; Rindhca, 2021[218]; International Ombudsman Institute, 2020[219])**.**

> ***Key measures to consider on addressing implementation challenges relating to independent oversight and complaint mechanisms***
>
> *Ensuring that independent public institutions addressing human rights complaints are functionally and financially independent from the executive. In particular, adequate and consistent funding is crucial for such oversight institutions and their ability to effectively respond to allegations of human rights abuses and fulfil their core mandates.*

2.5. The role of public communication in promoting civic space

Governments are increasingly aware of the role that effective public communication plays in: raising awareness among citizens, CSOs and other stakeholders about the public administration's activities; promoting opportunities and avenues for engagement and collaboration with the government; facilitating public feedback on policies and services; and informing citizens regarding feedback and complaint mechanisms. Understood as the government function to deliver information, listen and respond to citizens in the service of the common good and of democratic principles, public communication is key to building a more informed and active citizenry.[73] In this sense, it is a key component of a healthy information ecosystem and essential for encouraging democratic engagement (OECD, 2021[220]). Ultimately, public communication demonstrates openness and in doing so, contributes to building public trust, restoring public confidence among prevalent perceptions that citizens have little influence over policy making and improving citizen compliance with and support for public policies, services and reforms (OECD, 2020[221]; 2021[220]).

In relation to civic space, governments can commit to strengthening their communication with citizens and CSOs on individual rights, opportunities to participate in public decision making, as well as broader issues such as the CSO enabling environment. Such communication can benefit from being based on audience insights, including the public's preferences regarding different channels of information. Governments can also use online platforms to sustain an effective two-way dialogue with citizens and stakeholders that fulfil their duty to inform the public about individual rights (e.g. the right to assemble peacefully), related obligations (e.g. the need to inform the police of the time and location of an assembly) and complaint mechanisms (e.g. how to lodge a formal complaint in the event of excessive use of force by police during a protest), in addition to seeking feedback on new policies, bills, programmes and services.

Many governments already undertake initiatives to communicate with citizens and stakeholders on these issues and do so using a range of channels, including online portals, information offices, social media and helpline/messaging services. Both OECD and non-Members alike have developed good practices in the area of government communication on civic space matters. Table 2.1 highlights some examples.

Table 2.1. Information provided by governments on civic freedoms, 2020

Freedom/right	Good practices
Freedom of expression	**Canada** shares information specifically on freedom of speech in an online webpage, which also provides updates on how Canada is strengthening this right at home and globally (Government of Canada, 2022[222]). **Kazakhstan** has an Open Dialog Portal that includes a blog platform where public officials at both the national and subnational levels can share information on civic freedoms (Government of Kazakhstan, n.d.[223]). **Tunisia**'s High Commission for Human Rights and Fundamental Freedoms provides citizens with information on their civic rights and offers a helpline service (Tunisian High Commission for Human Rights and Fundamental Freedoms, n.d.[224]).
Freedom of assembly	**Germany** has a specific webpage for the right to assembly, noting its importance for liberal democracy and outlining the relevant legal provisions underpinning the right (Government of Germany, n.d.[225]). **New Zealand**'s Human Rights Commission has a variety of tools, research and resources on citizens' rights, including the freedom of assembly (New Zealand Human Rights Commission, n.d.[226]).
Freedom of association	**Chile** has an active Observatory of Citizen Participation and Non-Discrimination that promotes the development of policies and initiatives that strengthen citizen engagement and communicates widely through social media (Government of Chile, n.d.[227]). **Mexico**'s National Human Rights Commission offers information on freedom of association, assembly and demonstration, among others, and encourages citizens to associate to express ideas and make demands (Mexican National Human Rights Commission, n.d.[228]).
Right to privacy	**Belgium** has an online portal on the right to privacy, which informs citizens of ways to protect their data and the security of their devices (Government of Belgium, n.d.[229]). The **Latvian** Ombudsman also has a webpage, which details the right to private life and gives citizens several contact options, including an in-person office and a helpline (Latvian Ombudsman, n.d.[230]).
CSO enabling environment	**Argentina's** National Centre for Community Organisations has a number of quick-access webpages with information on registration, CSO data, virtual advice and other publications and relevant materials (Government of Argentina, n.d.[231]). **Estonia** has a CSO portal that offers a helpline and allows individuals and organisations to ask for advice from the conception to the dissolution of a CSO (Government of Estonia, n.d.[232]). **Morocco**'s General Secretariat of the Government provides information on the legal and regulatory frameworks that govern associations, as well as instructions on how to appeal for public generosity (Moroccan General Secretariat of the Government, n.d.[233]).

Source: 2020 OECD Survey on Open Government.

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Notes

[1.] For the purposes of this report, the term civic freedoms refers to the freedom of expression, peaceful assembly, association and the right to privacy.

[2.] See Articles 17, 19, 21 and 22 of the ICCPR (which grant the rights to privacy, freedom of expression, of peaceful assembly and freedom of association respectively to "everyone"), Articles 11, 13, 15 and 16 (which likewise grant the rights to privacy, freedom of thought and expression, to peaceful assembly and freedom of association respectively to "everyone") of the ACHR and Articles 8, 10 and 11 of the ECHR, which also grant the rights to privacy, freedom of expression, freedom of peaceful assembly and freedom of association respectively to "everyone".

[3.] Unless otherwise stated, in line with the OECD Survey on Open Government (see glossary), and for the purposes of this report, the term citizen is meant in the sense of an inhabitant of a particular place and not as a legally recognised national of a state.

[4.] See Article 19 of the ICCPR, with the same concept also found in Article 10 of the ECHR and Article 13 of the ACHR, which speaks of "freedom of thought and expression".

[5.] See Article 19, para. 3, of the ICCPR and Article 13, para. 2, of the ACHR. Article 10, para. 2, of the ECHR contains similar exceptions but additionally allows restrictions in the interests of territorial integrity, and for the prevention of disorder or crime or of the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

[6.] See Article 20, para. 2, of the ICCPR and Article 13, para. 5, of the ACHR, which speaks of incitement to lawless violence or to any other similar illegal action against any person or group of persons on any grounds including those of race, colour, religion, language or national origin, which shall be considered as offences punishable by law. See also the case law of the European Court of Human Rights, notably E.S. v. Austria, No. 38450/12, Judgment of 25 October 2018, para. 43, stating that expressions that seek to incite or justify hatred based on intolerance do not enjoy the protection afforded by Article 10 of the ECHR.

[7.] See some examples for these listed in European Court of Human Rights, Wille v. Liechtenstein, No. 28396/95, Grand Chamber, Judgment of 28 October 1999, para. 43.

[8.] See European Court of Human Rights, Fatullayev v. Azerbaijan, No. 40984/07, para. 103, where the court found that the imposition of a prison sentence in such cases was compatible with Article 10 of the ECHR only in exceptional circumstances, notably where other fundamental rights have been seriously impaired, as, for example, in cases of hate speech or incitement to violence. See also, in this context, IACHR, Judgment in the case of Ricardo Canese v. Paraguay, 31 August 2004, paras. 105-106.

[9.] See Article 19, para. 3, of the ICCPR, Article 10, para. 2, of the ECHR and Article 13, para. 2, of the ACHR.

[10.] See Council of Europe (2007[8]), para. 17, where states are called upon to define the concept of defamation more precisely in their legislation so as to avoid an arbitrary application of the law.

[11.] See UN Human Rights Committee (2011[3]), para. 47; European Court of Human Rights, Cumpănă and Mazăre v. Romania, No. 33348/96, Judgment of 17 December 2004, para. 116, where the court found that the imposition of prison sentences in a defamation case will, by their very nature, have a chilling effect on the exercise of freedom of expression. See also IACHR, Judgment in the case of Kimel v. Argentina, 2 May 2008, para. 76, noting that a broad definition of the crime of defamation could be contrary to the principle of minimum, necessary, appropriate, and last resort or ultima ratio intervention of criminal law.

[12.] See European Court of Human Rights, Reznik v. Russia, No. 4977/05, Judgment of 4 April 2013, para. 46.

[13.] See European Court of Human Rights, Lingens v. Austria, No. 9815/82, Judgment of 8 July 1986, para. 42, where the court noted that unlike private individuals, politicians inevitably and knowingly lay themselves open to close scrutiny of their every word and deed by both journalists and the public at large and must consequently display a greater degree of tolerance. See also IACHR, Case of Herrera-Ulloa v. Costa Rica, Judgment of 2 July 2004, para. 128.

[14.] While hate speech relates to speech with reference to a person or a group and aims to incite discrimination or violence towards that person or group based on who they are (e.g. due to their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor) incitement to violence relates to any act inciting or instigating a person or a crowd to the use or threat of violence against others.

[15.] See, in this context, IACHR (2015[238]), where the commission and its Office of the Special Rapporteur for Freedom of Expression reaffirmed that in order to effectively combat hate speech, a comprehensive and sustained approach that goes beyond legal measures and includes preventive and educational mechanisms should be adopted.

[16.] Restrictions on any form of expression must remain an exception for cases that fall into one of three categories acknowledged in international human rights law: i) states must criminalise expression that constitutes incitement to genocide (Art. III [c] of the Convention on the Prevention and Punishment of the Crime of Genocide, “direct and public incitement to commit genocide” is punishable); ii) states must prohibit by law, though not necessarily criminalise, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (ICCPR, Art. 20 [2]); iii) countries may further restrict the exercise of the right to freedom of expression only as provided by law and as necessary for respect of the rights or reputations of others or for the protection of national security, public order, or public health or morals (ICCPR, Art. 19 [3]).

[17.] This does not apply to countries where insulting religions or their leaders or institutions is only punishable if it disturbs the peace.

[18.] See European Court of Human Rights, E.S. v. Austria, No. 38450/12, Judgment of 25 October 2018, para. 43.

[19.] See Council of Europe, Parliamentary Assembly Resolution 1805 (2007) of 29 June 2007 on Blasphemy, religious insults and hate speech against persons on grounds of their religion, para. 15.

[20.] Article 19's analysis combines data from the V-Dem Institute's indicators and indices (over the period 2000-20) and its Pandemic Violations of Democratic Standards Index (2020-21). It selected the 25 most relevant indicators, half of which are based "on factual information obtainable from official documents, such as constitutions and government records" while the rest are "subjective assessments on topics like democratic and governing practices", with experts providing ratings for each country.

[21.] See European Court of Human Rights, Djavit An v. Turkey, No. 20652/92, Judgment of 20 February 2003, para. 56, and IACHR, Judgment in the case of Women Victims of Sexual Torture in Atenco v. Mexico, 28 November 2018, para. 171.

[22.] See UN Human Rights Committee, Denis Turchenyak et al. v. Belarus, Communication No. 1948/2010, views adopted on 24 July 2013, para. 7.4.

[23.] See Kiai (2013[237]), para. 59, who at the same time stressed that this does not apply where the message incites discrimination, hostility or violence within the meaning of Article 20 ICCPR. See further OSCE/ODIHR and Venice Commission (2020[45]), para. 30, and European Court of Human Rights, Primov and Others v. Russia, No. 17391/06, Judgment of 12 June 2014, para. 135, noting that it is only in rare cases that assemblies may be banned in relation to the message that their participants wish to convey.

[24.] It should be noted that generally only peaceful assemblies are protected in constitutions and other legislation.

[25.] See UN Human Rights Committee (2020[44]), para. 4; European Court of Human Rights, Kudrevičius and Others v. Lithuania, No. 37553/05, [GC] Judgment of 15 October 2015, para. 92.

[26.] See European Court of Human Rights, Kudrevičius and Others v. Lithuania, No. 37553/05, [GC] Judgment of 15 October 2015, para. 145; OSCE/ODIHR and Venice Commission (2020[45]), para. 19.

[27.] See European Court of Human Rights, Sergey Kuznetsov v. Russia, No. 10877/04, Judgment of 23 October 2008, para. 42.

[28.] See UN Human Rights Committee (2020[44]), para. 70, and Kiai (2012[236]), para. 28. See also European Court of Human Rights, Oya Ataman v. Turkey, No. 74552/01, Judgment of 5 December 2006, para. 38; OCSE/ODIHR and Venice Commission (2020[45]), para. 25; and Inter-American Commission on Human Rights (2015[234]), para. 129.

[29.] See European Court of Human Rights, Kudrevičius and Others v. Lithuania, No. 37553/05, [GC] Judgment of 15 October 2015, para. 150; Kiai (2012[236]), para. 29; and Inter-American Commission on Human Rights (2019[235]), para. 60.

[30.] See UN Human Rights Committee (2020[44]), para. 55, Kiai (2013[237]), para. 63, and OSCE/ODIHR/Venice Commission (2020[45]), para. 133.

[31.] See European Court of Human Rights, Christians against Racism and Fascism v. the United Kingdom, No. 8440/78, admissibility decision of 16 July 1980.

[32.] See UN Human Rights Committee (2020[44]), para. 56, and OSCE/ODIHR/Venice Commission (2020[45]), para. 147.

[33.] See UN Human Rights Committee (2020[44]), para. 53, and OSCE/ODIHR/Venice Commission (2020[45]), para. 132 and Inter-American Commission on Human Rights (2019[235]), para. 71.

[34.] The V-Dem Institute's indicator on freedom of peaceful assembly is based on the evaluation of multiple ratings provided by country experts, of whom about 85% are academics or professionals working in media or public affairs (e.g. senior analysts, editors, judges); about two-thirds are also nationals of and/or residents in a country and have documented knowledge of both that country and a specific substantive area.

[35.] See European Court of Human Rights, Gorzelik v. Poland, No. 44158/98, Judgment of 17 February 2004, para. 92.

[36.] See European Court of Human Rights, Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan, No. 37083/03, Judgment 8 October 2009, par. 82; OSCE/ODIHR/Venice Commission (2015[76]), paras. 35, 114, 253.

[37.] See IACHR, Huilca-Tecse v. Peru, and Judgment of 3 March 2005, para. 69 and Garcia and Family Members v. Guatemala, Judgment of 29 November 2012, para. 116.

[38.] See IACHR, Kawas-Fernández v. Honduras, and Judgment of 3 April 2009, paras. 145-146 and OSCE/ODIHR/Venice Commission (2015[76]), paras. 27, 29, 74 and 171.

[39.] While the question in the OECD Survey on Open Government focused on actions in the interests of public safety as an exception to freedom of association, numerous countries responded with references to legislation citing the maintenance of public order as a justification for limiting freedom of association. For this reason, both public safety and public order have been listed as exceptions to freedom of association found in national legislation.

[40.] While the question in the OECD Survey on Open Government focused on actions in the interests of national sovereignty as an exception to freedom of association, numerous countries responded with references to legislation citing national security as a justification for freedom of association.

[41.] See also OSCE/ODIHR/Venice Commission (2015[76]), para. 34.

[42.] See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Report A/HRC/23/39, 24 April 2013, para. 30.

[43.] See also OSCE/ODIHR/Venice Commission (2015[76]), para. 34.

[44.] See Kiai (2013[237]), para. 8.

[45.] See UN (2013[237]), paras. 19 and 20. See also Inter-American Commission on Human Rights, *Second Report on the Situation of Human Rights Defenders in the Americas*, 2011, para. 179, and OSCE/ODIHR/Venice Commission (2015[76]), paras. 32, 75, 221 and 222.

[46.] See, for general standards on proportionality UN Human Rights Committee, Lee v. Republic of Korea, Communication No. 1119/2002, views, 20 July 2005, paras. 7.2 and 7.3 and, with respect to dissolution of associations in particular, European Court of Human Rights, Vona v. Hungary, No. 35943/10, Judgment of 9 July 2013, paras. 58 and 71.

47. See European Court of Human Rights, Ognevenko v. Russia, No. 44873/09, Judgment of 20 November 2018, paras. 72-73; see also Junta Rectora Del Ertzainen Nazional Elkartasuna (ERNE) v. Spain, Application No. 45892/09, Judgment of 21 April 2015, paras. 38-40.

48. See European Court of Human Rights, Junta Rectora Del Ertzainen Nazional Elkartasuna (ERNE) v. Spain, Application No. 45892/09, Judgment of 21 April 2015, paras. 38-40.

49. See European Court of Human Rights, Matelly v. France, Application No. 10609/10, Judgment of 2 October 2014, para. 71.

50. See European Court of Human Rights, Denisov v. Ukraine, No. 76639/2011, [GC] Judgment of 25 September 2018, para. 95.

51. See Article 17 ICCPR.

52. See also Article 30 of the ACHR stating that restrictions on the enjoyment or exercise of the rights or freedoms recognised in the ACHR need to be in accordance with laws enacted for reasons of general interest and in accordance with the purpose for which such restrictions have been established.

53. See UN Human Rights Committee (1988[239]), para. 4.

54 See ACHR, Art. 8, para. 2, and ECHR, Art. 11, para. 2.

55. See ECHR, Art. 8, para. 2.

56. See European Court of Human Rights, Hämäläinen v. Finland, No. 37359/09, [GC] Judgment of 16 July 2014, para. 65.

57. See European Court of Human Rights, Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland, [GC] Judgment of 27 June 2017, para. 136 and P.G. and J.H. v. the United Kingdom, No. 44787/98, Judgment of 25 September 2001, para. 57.

58. See European Court of Human Rights, Klass and Others v. Germany, No. 5029/71, Judgment of 6 June 1978, para. 42.

59. See UN Human Rights Committee (1988[239]), paras. 7 and 8; European Court of Human Rights, Khan v. the United Kingdom, No. 35394/97, Judgment 12 May 2000, para. 26; Shimovolos v. Russia, No. 30194/09, Judgment of 21 June 2011, para. 68; and IACHR, Escher et al. v. Brazil, Judgment of 6 July 2009, para. 131.

60. The OECD Members that declared a state of emergency: Australia, Colombia, Costa Rica, the Czech Republic, Estonia, Finland, France, Germany, Hungary, Israel, Italy, Japan, Latvia, Lithuania, Luxembourg, Mexico, New Zealand, Portugal, the Slovak Republic, Spain and the United States.

61. This includes OECD Members that declared a general state of emergency and those that declared a state of health emergency (where such an option was available).

62. The OECD Members operating under a state of emergency as of June 2021 were: Australia, Colombia, Costa Rica, Hungary, Israel, Italy, Japan, Lithuania, Portugal, the Slovak Republic, Spain and the United States.

[63.] Indirect discrimination occurs where a general policy or measure which, though couched in neutral terms, has a particular discriminatory effect on a particular group; see, e.g. European Court of Human Rights, Biao v. Denmark, No. 38590/10, [GC] Judgment of 24 May 2016, para. 103.

[64.] See Article 2, para. 1, of the ICCPR, Article 14 and Protocol No. 12 to the ECHR, Article 1 of the ACHR, and Article 2 of the African Commission on Human and Peoples' Rights (ACHPR). Article 26 of the ICCPR, Article 24 of the ACHR and Article 3 of the ACHPR contain separate provisions outlining the equality of individuals before the law, and the right to equal protection of the law.

[65.] At the European level, the European Court of Human Rights notes that any "difference in treatment of persons in analogous, or relevantly similar situations" based on an "identifiable characteristic, or "status" is capable of amounting to discrimination. Such difference in treatment is discriminatory if it has no objective and reasonable justification, that is, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be achieved (Biao v. Denmark, No. 38590/10, [GC] Judgment of 24 May 2016, paras. 89-90).

[66.] See UN Human Rights Committee, CCPR General Comment No. 18: *Non-discrimination*, para. 10. Likewise, the European Court of Human Rights notes that the ECHR does not prohibit states from treating groups differently in order to correct "factual inequalities" between them (see, e.g. European Court of Human Rights, Taddeucci and McCall v. Italy, No. 15362/09, Judgment of 30 June 2016).

[67.] See, Art. 1, paras. 2 and 3, of the International Convention on the Elimination of All Forms of Racial Discrimination, stating that the convention does "not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens".

[68.] See Article 4 of the Convention on the Elimination of All Forms of Discrimination against Women, noting that the "adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention". In this context, see also Committee on the Elimination of Discrimination against Women (CEDAW), General recommendation No. 28 on the core obligations of States parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, 16 December 2010, para. 34: "States parties should financially support independent associations and centres providing legal resources for women in their work to educate women about their rights to equality and assist them in pursuing remedies for discrimination". See also Article 5, para. 4, of the Convention on the Rights of Persons with Disabilities, which states that "specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention".

[69.] At the same time, the report notes that weak legal frameworks with loopholes in some areas remain and still restrict women's access to rights and empowerment opportunities. Moreover, laws in some Caribbean countries continue to define women's citizenship rights in relation to their marital status. Discriminatory attitudes and violence against women in politics hinder women's full and uninterrupted political participation (OECD, 2020[105]).

[70.] The report also finds that the proportion of women in parliaments in the region was 30% in 2018, higher than the global average (24%), or the average for OECD Members (29%) (OECD, 2020[105]).

[71.] In Latin America, poverty levels in 2014 were significantly higher for the Afro-descendant and Indigenous population than for the non-Afro-descendant and non-Indigenous population. Lack of access to jobs and lower wages are problems facing African descendants throughout the LAC region (ECLAC, 2016[138]).

[72.] OECD Members are in a position to support civic space and civil society in non-Members in many other ways – in line with the 2021 DAC Recommendation on Enabling Civil Society in Development Co-operation and Humanitarian Assistance – that are not fully discussed in this report due to space constraints. See also Section 5.5 on the protection of civic space as part of development co-operation in Chapter 5.

[73] This is distinct from political communication, the legitimate but partisan communication conducted by elected officials, political parties and figures that supports personal, party or electoral objectives.