

PLATFORM ACCOUNTABILITY: A RULE-OF-LAW CHECKLIST FOR POLICYMAKERS



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Access Now defends and extends the digital rights of people and communities at risk. As a grassroots-to-global organization, we partner with local actors to bring a human rights agenda to the use, development, and governance of digital technologies, and to intervene where technologies adversely impact our human rights. By combining direct technical support, strategic advocacy, grassroots grantmaking, and convenings such as RightsCon, we fight for human rights in the digital age.

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I. INTRODUCTION

Online platforms and search engines¹ have revolutionized public and civic discourse. They have become indispensable tools for democratic participation, activism, and movements for civil rights and social justice. They also play a crucial role in helping people and communities expose human rights abuses, despite states' efforts to prevent the free flow of information in times of political crises or war.²

Yet even as these platforms have fostered human rights and fundamental freedoms, they have also created new and severe challenges for democracies, human rights, and the rule of law. They have often enabled the rapid spread of disinformation, misinformation, and hate speech targeting the most marginalized and oppressed groups. The way they are governed and operated has, in some cases, served to undermine people's access to reliable information and obstruct democratic processes, with dangerous consequences for people's safety, fundamental rights, and election integrity.

The integral role these platforms play in our societies and politics, the monopoly power the biggest players hold, and the impact they have on democracies and democratic processes have triggered numerous calls from lawmakers worldwide for strict platform regulation. While this regulatory appetite is justified to protect people's rights and defend democracy, legislators must strengthen platform accountability and oversight without taking disproportionate measures that would violate international human rights standards and the rule of law. States should adopt legal and regulatory frameworks that, first and foremost, protect people against disproportionate restrictions of their rights and second, preserve platforms' capacity to support and encourage the enjoyment of rights and freedoms. The goal for every state should be to establish a platform accountability model founded on the protection of people's human rights, the rule of law, human dignity, and equality. But what does this look like in practice?

To sustain peace, governance systems to hold public and private stakeholders accountable must be publicly accessible, equitably enforced, and independently adjudicated. To achieve

¹ The Digital Services Act (DSA) defines online platforms as providers of hosting services that not only store information provided by the recipients of the service at their request, but that also disseminate that information to the public at the request of the recipients of the service. See [Regulation \(EU\) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC \(Digital Services Act\)](#), Recital 13.

² Access Now (2023). [Shrinking democracy, growing violence: internet shutdowns in 2023](#).

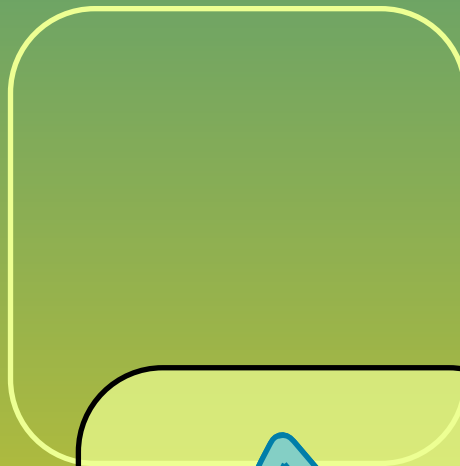
an inclusive legislative process, these laws must also align with international human rights norms and standards, ensuring fairness and consistency across multiple sectors. When there is a lack of the rule of law and accountability for human rights violations, it leads to injustice and impunity for crimes, conflict over unaddressed grievances, and oppressive, unaccountable rule.³ The same principles apply when crafting legal frameworks for platform accountability.

Context matters. Before drafting or adopting new laws to hold digital platforms accountable, legislators and policymakers worldwide must ensure key rule-of-law safeguards are in place. Without the necessary preconditions, platform accountability frameworks may not comply with rule-of-law principles, leading to abuse of people’s rights and failure to meet regulatory goals. In this report, Access Now proposes a rule-of-law checklist to enable states to enact platform accountability regulations that are fit for purpose and protect human rights. The checklist is based on the following umbrella principles:

- **Ensure institutional checks and balances of state power**
- **Safeguard an independent and impartial judiciary**
- **Establish transparent and good governance**
- **Protect and enable free and safe civic space**
- **Establish and adequately enforce data protection principles before regulating online platforms**

³ UN High Commissioner for Human Rights (2021). [Strengthening the Rule of Law and Accountability for Human Rights Violations](#).

COMPLY WITH INSTITUTIONAL CHECKS AND BALANCES



1. ENSURE INSTITUTIONAL CHECKS AND BALANCES OF STATE POWER

Respect and compliance with human rights, as recognized in constitutions, foundational texts, and international human rights frameworks, are indispensable for platform regulation. Such regulations must be anchored by a robust human rights-based legal framework that can address abuses by private actors and public authorities.

Following are the primary constitutional checks and balances every state compliant with the rule of law and international human rights must have in place to avoid the abuse of state power:

Constitutional recognition of human rights and the international treaties that protect them

The constitutional order can often be threatened by the ease with which constitutional provisions can be modified by those in power — typically, the political party in the executive branch, strengthened by an overwhelming majority in the legislative branch. It can also be threatened by the lack of power to modify the constitution, which can prevent expanding the constitutional recognition of human rights. If a government does not comply with constitutional order, it can lead to a deterioration in the protection of human rights and a lack of checks and balances to prevent abuses.

When constitutional order is threatened, regional and international human rights laws become crucial guidance for legislative frameworks, including those on platform regulation. Therefore, the most secure legal framework to prevent states from abusing platform accountability measures is one that incorporates human rights as codified in international human rights treaties. Having constitutional safeguards in place to ensure the recognition, respect, protection, and guarantee of human rights is indispensable for advancing digital platform regulations that do not violate human rights, or, if flawed regulations are adopted, for

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| | <p>providing the necessary judicial mechanisms to prevent rights violations or sanction perpetrators of such violations.</p> |
| <p>Resilient constitutional and international courts and implementation of their jurisprudence</p> | <p>The essential role of constitutional courts is, in general terms, to protect the rights of minorities.⁴ These courts are responsible for applying the law and, if necessary, interpreting it within a framework including the national constitution and international human rights treaties. When a law made by legislators and approved by the executive branch is deemed unconstitutional or violates human rights, constitutional courts must analyze whether the law, or parts of it, should be removed from the legal system due to inconsistency with the constitution.</p> <p>It is widely recognized that an efficient, independent, and autonomous judiciary is important for strengthening democracy and enforcing the rule of law.⁵ A judiciary that embodies these characteristics limits abuses of authority and ensures the legality and protection of the rights of all individuals.</p> <p>Transnational judicial bodies have become, by necessity, the ultimate bulwark against arbitrariness. These courts are also at the forefront of defending democratic values, mainly in countries affected by the rise of authoritarian regimes that manipulate democratic rules. In an increasingly uncertain world, where signs of “democratic deconsolidation” are evident, judicial bodies have emerged as crucial defenders of the separation of powers and, by extension, the independence of the judiciary,⁶ and the protection of human rights.</p> |

⁴ Burgorgue-Larsen L (2023). [Tribunales Constitucionales y Democracia: El Rol de Las Cortes Regionales En Democracia Algunas Reflexiones Basadas En Un Enfoque Comparativo de La Jurisprudencia de Los Tribunales Regionales de Derechos Humanos](#), *Catedrática de Derecho público en la Escuela de Derecho de la Sorbona, (Universidad Paris 1)*.

⁵ Inter-American Commission on Human Rights (2021). [Nicaragua: Concentración del poder y debilitamiento del Estado de Derecho](#).

⁶ *Supra* note 4.

**Independent
public
authorities**

In a democratic society, the concentration of power in any single entity poses a significant threat to individual liberties and the nation's overall well-being. To counter this risk, independent regulatory bodies, characterized by their autonomy and impartiality, play a crucial role in ensuring a balance of power and upholding the principles of democracy.⁷ Independent institutions complement the traditional separation of powers, reinforcing the objectives of modern democracy and safeguarding rights such as freedom of expression, transparency, and privacy.

Due to their specificity, the range of expertise necessary for their effective enforcement, and the danger of corporate capture by private actors, platform accountability models will require independent and sufficiently resourced enforcement and oversight mechanisms.⁸ Independence and an institutional design that prevents undue influence from the government, industry, and other interest groups are crucial requirements for regulators enforcing platform accountability rules.

→ At a minimum:

- 1.** All current and future platform accountability regulators should hold a distinct statutory authority free of government control, with a clearly defined mandate. Such bodies should be accountable to either national parliaments or another form of legitimate oversight mechanism;
- 2.** Well-defined and transparent professional criteria should govern their appointments, which should be non-political and solely based on merits;

⁷ Alcalá Méndez, A. (2024). [La Importancia de Los Organismos Constitucionales Autónomos: La Importancia Del INAI, El Universal.](#)

⁸ For instance, in the European Union, each member state is mandated to appoint a Digital Services Coordinator. This independent authority oversees intermediary services within its member state and coordinates with relevant sectoral authorities. The Digital Services Coordinators collaborate with an independent advisory group, the European Board for Digital Services. This group provides support through analysis, reports, and recommendations while coordinating the new joint investigation tool by Digital Services Coordinators.

3. The head of a regulatory office should be appointed for a fixed period, and their removal from the office should be prohibited unless justified by law and due process;
4. The executive branch of the government should not have the power to overturn a regulator's decisions, and all appeals against a regulator's decision should be decided by an independent judiciary;
5. The regulator must be granted sufficient, reliable, and transparent funding; and
6. The regulator must issue periodic transparency reports to the public and legislators.⁹

Depending on the contextual reality of a particular region, there might not be a need to create a new institution but rather a need to strengthen the collaborations and resources of existing independent authorities, such as data protection agencies, ombudspersons, electoral authorities, telecommunications agencies, and antitrust bodies, so they can play a pivotal role in upholding fundamental principles. Their autonomy and effectiveness are essential for protecting individual rights and freedoms and maintaining a robust democratic framework.

Declaration of states of emergency

States have recognized the existence of exceptional situations in their constitutions and at regional and international levels. In circumstances of war, public danger, or other emergencies threatening the independence or security of the state, they may implement provisions that, strictly limited to the difficulties of the situation, suspend obligations under international treaties to which they are parties.¹⁰ These provisions may also suspend guarantees recognized within each state that would otherwise

⁹ AlgorithmWatch (2024). [A Joint Statement on Digital Services Act Implementation at the National Level: An Open Letter to Member States of the EU](#).

¹⁰ [Corte Interamericana de Derechos Humanos. Garantías judiciales en estados de emergencia \(Arts 272, 25 y 8 Convención Americana sobre Derechos Humanos\) Opinión Consultiva OC-9/87 de 6 de octubre de 1987 Serie A No 9](#).

hinder a prompt and effective response to the emergency. Such situations are called “states of emergency” or “states of exception.”

Many regulations that foresee states of emergency stipulate the impossibility of suspending certain rights, such as legal personality, the right to life and personal integrity, the principle of legality, freedom of conscience, and the judicial guarantees indispensable for the protection of rights, among other rights.¹¹ In scenarios where the very existence of the rule of law is at risk, there may be some restrictions on freedom of expression and access to information, which is relevant to our discussion of platform accountability models. However, these restrictions are only permissible to the extent strictly required by the exigencies of the situation and only when and for as long as they are not inconsistent with the government's other obligations under international law.¹²

In any discussion on platform accountability measures, it's important to note that internet shutdowns, which include the blocking of specific and entire applications, websites, or platforms, are not justified even in states of emergency. Governments, militaries, and other authorities often use internet shutdowns as a tool of control during critical national moments or crises, weaponizing connectivity.¹³ However, people need access to the internet during emergencies to stay safe and informed, and to document potential human rights violations in real time.¹⁴

¹¹ *Ibid.*

¹² Joan Barata and Andrej Richter (2023). [Internet shutdowns in international law](#), *Global Freedom of Expression*, Columbia University.

¹³ Access Now (2023). [Shrinking democracy, growing violence: internet shutdowns in 2023](#).

¹⁴ Access Now (2023). [People need the internet during emergencies: #KeepItOn in Iraq](#).

SAFEGUARD INDEPENDENT AND IMPARTIAL JUDICIARY



2. SAFEGUARD AN INDEPENDENT AND IMPARTIAL JUDICIARY

Judicial independence is one of the most critical components of the rule of law. The successful implementation of platform accountability models relies on this essential requirement, which is of the utmost importance even in extraordinary circumstances, such as during states of emergency or times of crisis.

Everyone should be able to challenge decisions by private actors that affect their rights, such as a platform's decision to remove content or suspend service, before independent and impartial courts or tribunals. However, to fulfill people's right to access effective remedy through state-based judicial redress, and to uphold the principle of equality before the law, the judiciary system as a whole has to be impartial and independent.

There is no effective access to justice and fair trials without independent and resilient courts. Therefore, those assessing the independence of the judiciary should interpret this principle strictly.

The European Court of Human Rights (ECtHR) established in its jurisprudence a four-part test for assessing the independence of the judiciary: 1) the manner of appointment of its members, 2) their term of office; 3) the existence of guarantees against outside pressures; and 4) the question as to whether the body presents an appearance of independence.¹⁵ Similarly, *the Inter-American Court of Human Rights'* jurisprudence¹⁶ and *the United Nations Basic Principles on the Independence of the Judiciary*¹⁷ put forward closely related criteria.

Based on our analysis of existing international instruments, we propose that states meet the following conditions to guarantee an independent judiciary, which is the main precondition for the rule of law and adequate human rights protection.

Independence of judges

The independence (or impartiality) of judges, whether from the government or other actors, should be regarded as a guarantee of freedom, respect for human rights, and impartial application of the law. To safeguard judges' independence, court rulings should be made public, and there should not be disproportionate

¹⁵ [European Court of Human Rights \(ECHR\) Luca v. Romania judgement.](#)

¹⁶ Abreu Burelli, A. (2007). [Independencia judicial \(jurisprudencia de la Corte Interamericana de Derechos Humanos\)](#). UNAM - IIJ.

¹⁷ UN. OHCHR. (1985). [Basic Principles on the Independence of the Judiciary.](#)

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| | <p>pressure placed on judges to justify their reasoning. Rulings should not be subject to revision, other than those provided by law, such as via amendments established through appeal mechanisms or reopening proceedings. The executive and legislative branches of state power should refrain from invalidating judicial decisions, apart from specific exceptions as defined by law.</p> <p>The independence of judges from internal influences allows them to act without restriction, pressure, threat, or interference. For instance, the allocation of cases within a court system should follow objective and predefined criteria and should not be influenced by the wishes of a party to the case. Judges should be free to form and join professional organizations when the groups' objectives are to safeguard their independence, protect their interests, and promote the rule of law.</p> |
| <p>Procedures for the appointment of judges</p> | <p>Having a transparent method for appointing and dismissing judges is essential for ensuring judicial independence and people's trust in their judicial system. Judicial appointment rules must prevent doubts about judges' neutrality and professional integrity. Therefore the appointment and promotion procedures must be transparent and based on open competition.</p> <p>Persons selected for judicial office must be of integrity and suitability and have appropriate legal training or qualifications. Any method for selecting judicial personnel should ensure that they are not appointed for improper motives. There should be no discrimination in the selection of judges. Every state should adopt and enforce adequate procedural safeguards against undue political influence over the judiciary.</p> |
| <p>People's trust in the judiciary</p> | <p>In its jurisprudence, the ECtHR has emphasized the appearance of independence to external observers or, in other words, the</p> |

general public.¹⁸ This doctrine was developed further by the Court of Justice of the European Union (CJEU). In practice, the EU has a binding legal standard based on a social perception test that establishes the impartiality and independence of judges and courts, which must be assessed from the point of view of individuals. People must not have the impression (i.e., a subjective feeling) that there are factors, such as appointment procedures, disciplinary responsibility, or the possibility of termination of a judicial secondment to a higher court, that affect the impartiality of judges, primarily through the power of the executive and the legislative branches of the government.¹⁹ Judges who are part of the society they serve can only effectively administer justice with public confidence. Politicians' intense pressure on the judiciary, often publicly expressed in government statements, may erode the general public's trust in their courts.

¹⁸ *Ibid.*

¹⁹ [Court of Justice of the European Union \(CJEU\) Case C-791/19 \(Commission v Poland III and IV\)](#).



ESTABLISH TRANSPARENT AND GOOD GOVERNANCE



3. ESTABLISH TRANSPARENT AND OPEN GOVERNANCE

Transparency is a core pillar of good governance and an essential prerequisite for the rule of law. It enables oversight, helps deter harm, and is necessary to ensure meaningful accountability for abuse. Without transparency, there cannot be informed public debate and democratic accountability. When a government ensures transparency, it also sets a rights-promoting positive precedent for future administrations and other governments worldwide. In addition, it serves governments' strategic interests and strengthens public confidence in government actions and policies.²⁰

Below we discuss the minimum safeguards necessary for a state abiding by the rule of law to establish transparent governance. As a foundational matter, it is necessary to have a well-functioning system of institutional checks and balances to ensure that the authority exercised by one branch of state power is subject to the scrutiny of others. While national models for splitting authority may vary between countries because of their different constitutional traditions, each must have checks and balances to ensure respect for the rule of law and democratic norms. One essential element for such a system is the integration of institutions and organizations that can bring an independent voice.

Transparency of lawmaking and public decision-making

Ensuring an open legislative process with sustained public and stakeholder consultations and attention to the quality of lawmaking can have a long-term positive effect on the ability to ensure the rule of law.²¹ In the context of developing platform accountability frameworks, following this principle would entail consulting relevant stakeholders and making all regulatory decisions transparent. Due to the real risk of corporate capture, creating a public lobby register and other transparency measures could safeguard regulators' political independence, as well as their independence from industry.²² Such lobby registries should contain comprehensive and easily accessible information about

²⁰ Columbia Law School Human Rights Clinic and Sana'a Center for Strategic Studies (2017). [Out of the Shadows: Recommendations to Advance Transparency in the Use of Lethal Force](#).

²¹ Communication from the European Commission to the Council of the EU, the European Economic and Social Committee, the Committee of the Regions (2024). [2024 Rule of Law Report: the Rule of Law Situation in the European Union](#).

²² Julian Jaursch (2023). [Wie die deutsche Plattformaufsicht aufgebaut sein sollte Empfehlungen für einen starken „Digital Services Coordinator“](#).

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| | <p>any meetings and discussions regulators have with representatives of online platforms. Regulators could administer these registries directly, or they could be integrated into existing transparency registries at the national level.²³</p> |
| <p>Protection of whistleblowers</p> | <p>It's in the public interest to protect whistleblowers and human rights defenders disclosing sensitive information. Whistleblower protection falls under the right to freedom of expression and the public's right to know, under international and regional human rights standards.²⁴ There are many positive examples of countries that have adopted whistleblower protection laws as a part of larger legislative packages addressing anti-corruption and providing safeguards for access to information or transparency of political financing.²⁵ Protecting whistleblowers is critical for effectively safeguarding free expression, accountability, and democratic governance. <i>The European Court of Human Rights</i> has upheld the importance of whistleblower protection in its jurisprudence, even in cases when the information disclosure concerns national security, provided the disclosure meets the public interest test.²⁶</p> <p>Given the importance of whistleblowers, it is imperative that regulators enforcing platforms' accountability frameworks actively protect them — including whistleblowers who work at</p> |

²³ For more information about corporate capture and power asymmetries between Big Tech and civil society organizations, see Margarida Silva, Bram Vranken, Max Bank (2024). [Uncovering Big Tech's hidden network: Undisclosed affiliations distort Digital Market Act's public workshops.](#)

²⁴ Special Rapporteur on the promotion and the protection of the right to freedom of opinion and expression (2015). [The protection of sources and whistleblowers.](#)

²⁵ For instance, in 2017, Tunisia adopted the Organic Law No. 2017-10 for reporting corruption and protecting whistleblowers: <https://legislation-securite.tn/latest-laws/loi-organique-n-2017-10-du-7-mars-2017-relative-au-si-gnalement-des-faits-de-corruption-et-a-la-protection-des-lanceurs-dalerte/>. In the EU, Latvia has a strong protective framework of whistleblowers in the whistleblowing law adopted in 2023: <https://likumi.lv/ta/en/en/id/329680-whistleblowing-law>

²⁶ [European Court of Human Rights \(ECHR\) Guja v. Moldova judgement.](#)

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| | <p>digital platforms. They should enable whistleblowers to report grievances anonymously, safely, and efficiently.</p> <p>Notably, whistleblowers' testimonies can be key for demonstrating to the public the need for democratically legitimate and consistently enforced platform accountability rules.</p> |
| Access to information | <p>Enhancing the transparency of the state's public decision-making processes is essential for determining public authorities' level of accountability. It is a precondition for inclusive decision-making and strengthens cooperation with external stakeholders in public affairs. Accordingly, a legally binding and enforceable framework that grants public access to information is a necessary preventive measure against abuse of state power and safeguards functional checks and balances. For instance, in the European Union, <i>the EU Charter of Fundamental Rights</i> grants all EU citizens and residents a right to access documents held by EU institutions, bodies, offices, and agencies.²⁷</p> |
| Transparency of media ownership and freedom of the media from governmental interference | <p>Media freedom and pluralism ensure the flow of information and play a key role in holding power to account. Under international human rights law, all states must guarantee an enabling environment for journalists, protect their safety, and promote media pluralism and freedom. Transparent allocation of state advertisements, public information campaigns, and rules governing the transparency of media ownership are each elements that strengthen media accountability and facilitate public scrutiny of the news.²⁸ The media sector is, by nature, public-facing and vital for democracy, the rule of law, and the internal market. Accordingly, people must be adequately</p> |

²⁷ European Ombudsman (2023). [European Ombudsman guide on the right of public access to EU documents](#).

²⁸ Civil Liberties Union for Europe (2024). [Liberties Rule of Law Report 2024 #ROLREPORT2024](#).

informed of where their information comes from.²⁹ State advertising includes all use of the state budget at all levels or state-controlled companies for advertising and campaigns. Allocations for this advertising must be transparent and based on fair criteria to prevent state advertising from being used for political influence over independent media.

Political and state pressure or control over the media undermines media freedom and the freedom to seek, receive, and impart information. National media markets defined by strong ownership concentration and a lack of media ownership transparency directly threaten the plurality of views and freedom of opinion. Undue political pressure and political influence on the media, notably from state authorities and ruling parties, undermines media independence and can negatively impact the rule of law. Transparent rules safeguard the fair allocation of state advertising and provide strong safeguards to prevent politicization of the public sphere. Public service media are critical.³⁰ Safeguards that ensure the independent governance and editorial independence of public service media are key to preventing political interference.

²⁹ European Partnership for Democracy (2023). [Media ownership and state advertising transparency in the trilogue negotiations of the EMFA](#).

³⁰ Communication from the European Commission to the Council of the EU, the European Economic and Social Committee, the Committee of the Regions (2024). [2024 Rule of Law Report: the Rule of Law Situation in the European Union](#).

PROTECT AND ENABLE FREE AND SAFE CIVIC SPACE



4. PROTECT AND ENABLE FREE CIVIC SPACE

A free civic space is indispensable for a human-centered approach to platform accountability. The participation of experts, journalists, civil society organizations, and other civil society actors is crucial during the deliberation, adoption, and enforcement stages of implementing platform accountability regulations. This implementation requires an enabling environment where the rights of civic space actors are upheld, including the rights to freedom of association, assembly, and expression. In this regard, two primary safeguards are essential: a legal framework in compliance with international Freedom of Information Access (FOIA) standards and state respect for freedom of expression obligations.

For civil society to fulfill its role as watchdogs of democracy and the rule of law, states are obliged to create an enabling framework that stands on the following safeguards:

Enabling a legal and safe environment

International human rights law guarantees people the right to life, liberty, and security, and the freedom to participate in public affairs, without undue interference in their enjoyment of the freedoms of expression, assembly, and association. To safeguard free civic space, it is crucial to have laws that comply with human rights standards that ensure the right of individuals to organize assemblies, including demonstrations, protests, or meetings, to discuss policies. A free civic space also requires a legal framework that enables organizations and associations to make decisions and engage freely in public interest matters without fear of state reprisal. States should therefore avoid arbitrary restrictions, protecting civil society actors from smear campaigns, threats, or any other type of rights violations, and enhance their capacity to pursue their activities, as required under state human rights obligations.

States should also be wary of “foreign agent” and counter-terrorism laws that have spread around the globe in recent years. They typically apply the stigmatizing designation of “foreign representative” to any nongovernmental organization

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| | <p>that receives foreign funding and engages in vaguely defined political activities. Such laws risk shrinking space for independent organizations.³¹</p> |
| Freedom of association and assembly | <p>Overly strict legal requirements for forming and registering associations seriously affect the freedom of association. Organizations may face challenges when establishing their activities and conducting their work. These include disproportionate and targeted measures regarding data protection, transparency, money laundering, and taxation.³²</p> <p>Upholding freedom of association and assembly is necessary to enable an accessible, inclusive, and pluralistic civic space, which is in turn essential for promoting democratic values and protecting human rights. Civic space actors carry out awareness-raising and advocacy activities, ensure the role of a watchdog, and hold decision-makers accountable. They also contribute to creating human rights-based legislation and planning for its effective enforcement.</p> |
| Freedom of expression and access to information | <p>States must protect the right to freedom of expression. Their obligations are twofold: negative and positive.³³</p> <p>The negative obligation is to refrain from arbitrarily interfering with freedom of expression and to refrain from restricting access to media outlets. The positive obligation is to create a favorable environment for participation in public debate by all persons, enabling them to express their opinions without fear. This includes protecting journalists' work by prohibiting authorities from pressuring journalists to disclose their sources, from</p> |

³¹ Human Rights Watch (2024). [Foreign Agent' Laws Spread as EU Dithers to Support Civil Society](#).

³² UN Special Rapporteur on the rights to freedom of peaceful assembly and of association (2012). [Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, Maina Kiai](#).

³³ Regarding states' positive obligations, see: [European Court of Human Rights \(ECHR\) Dink v. Turkey judgement](#).

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| | <p>detaining them, or from using surveillance tools against them. States can also create independent public media outlets, and refrain from interfering in their editorial independence or using them for propaganda.</p> <p>States should be wary of regulations that hamper access to information, criminalize expression, authorize censorship, allow arbitrary removal of online content, or enable online and offline verbal harassment and defamation, all of which can violate the right to free expression. The most common challenge civil society faces in the legal environment is restrictions on access to information.</p> |
| <p>Participation and cooperation with authorities</p> | <p>Civil society participation in decision-making may happen at different levels in the policy development and implementation process, from consultation and co-drafting to monitoring of policy enforcement. When creating policies related to online platform accountability, states should create and foster an environment where civic space actors can actively and effectively participate in decision-making processes.³⁴</p> <p>Without a free civic space, platform accountability laws and policies will be instrumentalized to serve governmental interests at the expense of people’s rights. For a robust platform accountability model to be fully realized, media outlets should have the freedom to operate independently, and civil society organizations should be able to participate in decision-making processes. For example, during the negotiations around the Digital Services Act in the EU, several organizations shaped the final text without fear of prosecution.</p> <p>It is also necessary for states to allow civic space actors to submit written observations, attend legislative hearings, and discuss the</p> |

³⁴ The Office of the High Commissioner for Human Rights (2018). [Guidelines for States on the effective implementation of the right to participate in public affairs](#).

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| | <p>draft with lawmakers and other officials. To accomplish this in the context of crafting platform accountability measures, states should create a multi-stakeholder body, based on objective, transparent, inclusive, and gender-based criteria.</p> <p>During the enforcement phase for platform accountability regulations, civic space actors should have access to official reports on the progress of the law’s implementation and, more generally, to crucial information to allow effective participation in monitoring.</p> |
| Financing and access to resources | <p>To engage in human rights work, civil society organizations need human and material resources and access to national and international funding (public and private); the ability to travel and communicate without undue interference; and the right to benefit from the protection of the state. The <i>Organization for Security and Co-operation in Europe’s ODIHR and Venice Commission</i> guidelines on freedom of association note that “the ability to seek, secure, and use resources is essential to the existence and operation of any association.” Access to and the use of funds provide associations with the means to operate and pursue their missions and are, therefore, inherent elements supporting the right to freedom of association.³⁵</p> <p>Finally, states' positive obligations to safeguard human rights entail establishing an independent regulatory authority for the broadcast sector.³⁶ Such an obligation is vital in the context of crafting rules for platform accountability, given the regulator's role in enforcing the legislation (for instance, Digital Services Coordinators in EU member states play a crucial role in enforcing the Digital Services Act). In a non-democratic context, if a</p> |

³⁵ Organization for Security and Co-operation in Europe (2015). [Joint Guidelines on Freedom of Association](#).

³⁶ Council of Europe (2000). [Recommendation Rec\(2000\)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector](#).

regulator is not independent, it might be obliged to align its decisions with those in political power, such as by excluding civic space actors because of their political opinions or sanctioning media outlets that are seen as hostile toward the government.

ESTABLISH AND ADEQUATELY ENFORCE DATA PROTECTION PRINCIPLES BEFORE REGULATING ONLINE PLATFORMS



5. ESTABLISH AND ADEQUATELY ENFORCE DATA PROTECTION PRINCIPLES BEFORE REGULATING ONLINE PLATFORMS

Due to the human rights risks emerging technologies may pose to society, protecting people’s data has become an essential precondition for the rule of law in a democratic society. States should have adequate frameworks in place to protect individuals' personal information. However, such frameworks must align with binding data protection principles.

First, any framework to protect personal information must clearly define personal and sensitive data. The level of protection should correspond with the sensitivity of each data category. The category of sensitive data should include genetic and biometric data, communications content, and metadata, as they can reveal particularly sensitive personal traits. A data protection framework could accordingly include specific measures for protecting data exchanged during online communications, and related privacy provisions to guarantee the confidentiality of those communications. Together with clear definitions for personal and sensitive data, data protection frameworks should be built on the eight principles outlined below.

These interconnected principles articulate the measures that any data protection framework must include to protect people’s rights effectively. The effective codification of these principles requires developing a set of users’ rights; a legal basis for data processing; data security measures; oversight mechanisms; obligations for entities processing data; and measures enabling data transfer to third countries.

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| Fairness and lawfulness | Personal data shall be processed fairly and lawfully, which means that information should be processed on a clear legal basis, for a lawful purpose, and fairly and transparently, so that people are adequately informed about how their data will be collected, used, or stored, and by whom. |
| Purpose limitation | Personal data shall be collected and processed only for a specified and lawful purpose. This purpose shall be specific, explicit, and |

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| | limited in time. Data shall not be further processed in any manner incompatible with that purpose. |
| Data minimization | Personal data collected and used shall be limited to adequate, relevant, and not excessive for a specific purpose. |
| Accuracy | Personal data shall be accurate and, where necessary, updated. People shall have the right to erase, rectify, and correct their personal information. |
| Retention limitation | Personal data processed for any purpose shall not be kept longer than necessary. |
| User's rights | Personal data shall be processed according to people's rights, such as the right to access or erasure. |
| Integrity and confidentiality | Personal data shall be processed using appropriate technical or organizational measures to ensure state-of-the-art security, including protection against unauthorized or unlawful processing and accidental loss, destruction, or damage. |
| Adequacy | <p>Personal data shall only be transferred to a third country or territory if that country or territory ensures adequate protection for people's rights and freedoms regarding processing personal data. Data protection frameworks shall provide mechanisms enabling the free flow of data between countries while safeguarding a high level of data protection.</p> <p>Public authorities must enforce and fully respect these principles to ensure that any regulation establishing a platform accountability framework will be a human rights complaint. For more guidance on how</p> |

to develop an adequate data protection framework, please consult Access Now's *Creating a Data Protection Framework: A Dos and Don'ts Guide for Lawmakers*.³⁷

III. CONCLUSION

The rule of law is crucial to democracies. Protection of independent courts, citizens' fundamental rights and civil liberties, a free and pluralistic media landscape, and an active civil society are necessary preconditions for a human rights-complaint model of platform accountability. Only if these criteria are met can the government be considered legitimate, effective, and widely supported by citizens. A civil society that is strong, open, and capable of playing a positive role in politics and government will thrive in such an environment.

³⁷ Access Now (2019). [Creating a Data Protection Framework: A Dos and Don'ts Guide for Lawmakers](#).