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## Introduction

In the face of exceptionally complex national and global challenges, an enabling environment for civic engagement is more vital today than ever. However, due to a number of structural and contingent factors, civic spaces have had to face increasing pressures around the world. For this reason, in his Call to Action on Human Rights, the United Nations Secretary General urges all relevant actors to do more for the promotion and protection of civic space as a key component of peaceful, just and inclusive societies. This brief – developed by the United Nations Development Programme with technical support from the International Center for Not-for-Profit Law – seeks to provide guidance on how to ensure the alignment of legal frameworks for civic space with international human rights standards. As such, it is intended as a tool for both policy dialogue and technical assistance. The brief builds on the “United Nations Guidance Note on Protection and Promotion of Civic Space” and is complemented by a companion document “Legal frameworks for civic space: a practical toolkit”, which covers the same issues in more detail and includes a comprehensive set of checklists, examples and resources.

## Defining civic space: a conceptual framework

Consensus on the definition of “civil society” and the related notions of “civic engagement” and “civic space” remains elusive, as these concepts have been articulated in a great variety of ways, and there continues to be significant variance with respect to their exact meanings. Such multiplicity of understandings stems in part from a diversity of ideological standpoints, but it also reflects the fluid and complex nature of the processes through which members of society take action to shape their communities.

Given this context, the definitions provided below were developed to be, at the same time, consistent with the most current policy debates on “civil society” and broad enough

to accommodate actual usage of the terms as observed in day-to-day practice across different realities.

### DOMAIN

**Civil society** is the arena – or domain of social interaction – outside the spheres of the family, the state and the market in which individual and collective actors undertake voluntary action to advance socially relevant goals.

### ACTORS

**Civil society actors** are a diverse set of individual and collective actors that operate in the civil society arena. Among them, civil society organizations (CSOs) are the broad range of organized collective actors, which can structure themselves in a variety of ways, from more to less formal.

### PROCESS

**Civic engagement** is the process through which individual and collective actors undertake voluntary action in the civil society arena – as opposed to the spheres of the family, the state and the market – with the aim of achieving socially relevant goals.

In this framework, civil society is understood as a contested ground in which multiple players pursue different (and often opposing) objectives based on varied understandings of the “public good”. Civil society is also seen as a fluid space, with many actors stepping in and out of this domain as circumstances evolve, and others straddling across multiple domains (e.g., civil society and the market, or civil society and the state).

If “civil society” is an abstract domain of social interaction (essentially, a theoretical construct), “civic space” represents the actual circumstances in which civic engagement takes place in a given society at a given point in time. The features of the civic space determine in very practical ways the size, shape and

operating modalities of the civil society arena in a certain context, including the extent to which an operating environment can be regarded as “enabling” for a range of civil society actors.

#### OPERATING CONDITIONS

**Civic space** encompasses the multiple factors (including legal, policy, administrative, economic, customary and cultural factors) determining the extent to which members of society are able – either individually or collectively – to engage in civic action or, in other words, the conditions that make a meaningful and vibrant civil society possible (or not) in a given context.

#### APPLICABLE RULES

**Normative frameworks for civic space** are the wide range of interrelated law, policies, regulations and institutional procedures, which impact the possibility, level and type(s) of civic engagement – both offline and online. These encompass frameworks directly related to civil society participation and state-society relations as well as any others that may impact civic space by indirect methods or means, intentionally or otherwise.

The UN High Commissioner for Human Rights states that “the five key elements to create and maintain a safe and enabling environment for civil society are: a robust legal framework that is compliant with international standards as well as a strong national human rights protection system that safeguards public freedoms and ensures effective access to justice; a political environment conducive to civil society work; access to information; avenues for participation by civil society in decision-making processes; and long-term support and resources for civil society.”<sup>1</sup> This brief focuses primarily on the first one of these elements: legal frameworks for civic space.

A functioning and enabling legal framework is no guarantee of a vibrant civil society, and a restrictive legal framework is not necessarily an insurmountable barrier to civil society engagement and participation in public affairs. Nonetheless, the legal framework plays a pivotal role, and a supportive legal framework can be considered a necessary, even if not sufficient, condition for the development of a strong, inclusive and sustainable civil society sector.

## The normative case for civic space

### Civic space and the right to participate in the conduct of public affairs

The right to participate in the conduct of public affairs is embodied in Article 21 of the Universal Declaration of Human Rights (UDHR), Article 25 of the International Covenant on Civil and Political Rights (ICCPR) and several other international and regional legal instruments.<sup>2</sup> As explained in the UN Human Rights Committee’s General Comment No. 25 (1996),<sup>3</sup> participation in the conduct of public affairs is a rather broad concept with several interlinked dimensions. It includes the right to vote and seek elected office as well as the right to access public service on general terms of equality. But it also includes – very importantly – the right to participate directly in different aspects of public life. As clarified by the Human Rights Committee, people have a right to engage in the public sphere and shape the destiny of their communities not just as voters, holders of elected office or civil servants but also in a multitude of other ways, such as by “exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves”. These forms of participation, to be effective, require open,

<sup>1</sup> UN Human Rights Council (2016). Report of the UN High Commissioner for Human Rights on the [Practical Recommendations for the Creation and Maintenance of a Safe and Enabling Environment for Civil Society, based on Good Practices and Lessons Learned](#) (A/HRC/32/20), para. 83, p.17. Geneva, Switzerland.

<sup>2</sup> See a full list on the OHCHR webpage on [international standards on the equal participation in political and public affairs](#).

<sup>3</sup> UN Human Rights Committee (1996). General Comment No. 25 on Article 25: The Right to Participate in Public Affairs (CCPR/C/21/Rev.1/Add.7). Geneva, Switzerland.

free, safe and inclusive civic spaces based on the full realization of the freedoms of opinion, expression, peaceful assembly and association (which are also addressed as separate rights under international human rights law).

## Key aspects of civic space addressed under international human rights law

### Freedom of opinion and expression

Freedom of opinion and expression is protected under Articles 19 of both the UDHR and the ICCPR (complemented by General Comment No. 34<sup>4</sup>) as well as several other international and regional instruments<sup>5</sup>. It implies the right to seek, receive and impart information and ideas of all kinds regardless of frontiers, both online and offline. The scope of this right includes every form of idea and opinion capable of transmission to others and even embraces expression that may be regarded as deeply offensive. However, based on ICCPR Article 20, efforts must be made to prevent and address propaganda for war and incitement to discrimination, hostility or violence, including through prohibition by law.<sup>6</sup> The freedoms of opinion and expression are inextricably linked to the right of access to information, which provides for the possibility to obtain information of public interest held by state institutions or other bodies carrying out public functions. Media freedom – underpinned by a media environment that provides for pluralism, independence and safety – is another essential element for the realization of the right to freedom of opinion and expression.

<sup>4</sup> UN Human Rights Committee (2011). General Comment No. 34 on the Freedoms of Opinion and Expression (CCPR/C/GC/34). Geneva, Switzerland.

<sup>5</sup> See a full list on the OHCHR webpage on [international standards on freedom of opinion and expression](#).

<sup>6</sup> Restrictions to the freedom of expression may be admissible, beyond what is stipulated in ICCPR Article 20, if provided by law and necessary on the specific grounds listed under paragraph 3 of ICCPR Article 19. These grounds are the protection of the rights or reputations of others as well as protection of national security, public order (ordre public), public health and public morals. However, as cautioned by General Comment No. 34, any restriction should be applied in keeping with the principle of proportionality and with extreme care not to reverse “the relation between right and restriction and between norm and exception”.

<sup>7</sup> UN Human Rights Committee (2020). General Comment No. 37 on the right of peaceful assembly (CCPR/C/GC/37). Geneva, Switzerland.

<sup>8</sup> See a full list on the OHCHR webpage on [international standards on the rights to freedom of peaceful assembly and of association](#).

<sup>9</sup> Article 21 of the ICCPR recognizes that restrictions may be placed on the exercise of the freedom of assembly “in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”. The same article, however, notes that all restrictions should be imposed in conformity with the law and that no restrictions should be imposed other than those which are “necessary in a democratic society”.

<sup>10</sup> See a full list on the OHCHR webpage on [international standards on the rights to freedom of peaceful assembly and of association](#).

### Freedom of peaceful assembly

The freedom of peaceful assembly is enshrined in Article 20 of the UDHR, Article 21 of the ICCPR (complemented by General Comment No. 37<sup>7</sup>) and several other international and regional instruments<sup>8</sup>. This right protects the non-violent gathering of persons for expressive purposes (such as conveying a position, demonstrating solidarity or asserting identity) as well as gatherings with entertainment, cultural, religious or commercial objectives. As such, the right to the freedom of peaceful assembly constitutes an individual right that is exercised collectively. Assemblies protected under Article 21 of the ICCPR may be stationary (such as pickets) or mobile and may take many forms, including demonstrations, protests, meetings, processions, rallies, sit-ins, candlelit vigils and flash mobs. Furthermore, Article 21 of the ICCPR protects peaceful assemblies wherever they may take place: in public and private spaces, outdoors and indoors. As clarified by General Comment No. 37, assembly activities occurring online – including public debate and collective protests via electronic means – are also protected under ICCPR Article 21.<sup>9</sup>

### Freedom of association

The freedom of association is protected by Article 20 of the UDHR, Article 22 of the ICCPR and several other international and regional instruments.<sup>10</sup> It implies the right of any group of individuals or entities to engage in collective action in the pursuit of lawful purposes. International human rights law protects individuals from undue interference in the

exercise of their freedom of association. This means, among other things, that associations should be allowed to decide freely on matters of internal organization (such as membership or internal governance) and that they should be able to freely engage their constituencies and the public at large without fear of reprisal. Additionally, the right to freedom of association includes the ability to seek, receive and use

resources – human, material and financial – from domestic, foreign, and international sources. Individuals have a right to form an association as a legal entity. However, they cannot be required to form a legal entity in order to enjoy the freedom of association. Furthermore, no individual may be compelled to join an association.<sup>11</sup>



***“Every citizen shall have the right and the opportunity [...] without unreasonable restrictions [...] to take part in the conduct of public affairs, directly or through freely chosen representatives [...]”***

ICCPR Art. 25



***“[...] Everyone shall have the right to hold opinions without interference. [...] Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers [...]”***

ICCPR Art. 19



***The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society [...]***

ICCPR Art. 21



***“[...] Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests. [...]”***

ICCPR Art. 22

<sup>11</sup> As in the case of the freedom of assembly, international human rights law recognizes that limitations may be imposed on the exercise of the freedom of association in order to protect national security, public safety, public order, public health or morals and the rights and freedoms of others. Like Article 21, however, ICCPR Article 22 requires these limitations to be “prescribed by law” and “necessary in a democratic society”. In addition, Article 22 establishes that states may lawfully restrict the freedom of association of members of the armed forces and of the police.

**Table 1** Other rights of critical importance to civic space

Right	Key provisions under human rights law
Right to life, liberty and security of the person	UDHR (art. 3), ICCPR (arts. 6 and 9.1) <sup>12</sup>
Right to equality and non-discrimination	UDHR (art. 7), ICCPR (art. 26) <sup>13</sup>
Rights to privacy, anonymity, and protection of personal data	UDHR (art. 12), ICCPR (art. 17) <sup>14</sup>
Right to freedom of thought, conscience and religion	UDHR (art. 18), ICCPR (art. 18) <sup>15</sup>

## Other rights critical to civic space

The freedoms of opinion, expression, peaceful assembly and association are of critical importance but do not represent the only preconditions for the realization of open, safe and inclusive civic spaces. Some of the other rights that have a direct impact on the ability of civil society actors to exercise their roles as independent development actors are listed below.

## Civic space and the 2030 Agenda for Sustainable Development

As an agenda “of the people, by the people and for the people” requiring a “whole-of-society approach”, Agenda 2030 is fundamentally premised on the notion that open and safe civic spaces are an essential condition for sustainable development. Furthermore, there is a strong convergence between the Agenda’s principle of “leaving no one behind” and the ideal of an inclusive civic space.

Member states have made several commitments related to civic space in the context of Sustainable Development Goal 16 (Promote peaceful, just and inclusive societies). In particular, target 16.7 aims to ensure responsive,

inclusive, participatory and representative decision-making at all levels, while target 16.10 focuses on public access to information and the protection of fundamental freedoms, in accordance with national legislation and international agreements.

But recognition of the importance of civic space is not limited to SDG 16. Target 5.5 aims to ensure women’s full and effective participation at all levels of decision-making in political, economic and public life. Target 10.2 aims to promote the social, economic and political inclusion of all, regardless of age, sex and disability status. Several targets also refer to inclusive participation in specific areas such as water and sanitation (target 6.b) or urban planning (target 11.3).<sup>16</sup>

## The instrumental case for civic space

### Civic space and sustainable development

A vibrant civil society can contribute to sustainable development in multiple ways. For instance, civil society actors can help channel citizen inputs into policy dialogue,

<sup>12</sup> In addition to prohibitions of arbitrary arrest or detention, personal integrity is protected by prohibitions against torture and other cruel, inhuman or degrading treatment or punishment (art. 5 of the UDHR and art. 7 of the ICCPR).

<sup>13</sup> See also the OHCHR webpage on [norms and standards against discrimination](#).

<sup>14</sup> See also the OHCHR webpage on [international standards on the right to privacy](#).

<sup>15</sup> See also the OHCHR webpage on [international standards on the freedom of religion or belief](#).

<sup>16</sup> Other declarations that, while non-legally binding, reflect member states’ commitment to key principles related to civic space include the Declaration on the Right to Development (1986) and the Declaration on Human Rights Defenders (1999).

which over time can lead to more legitimate and responsive decision-making. This role is particularly important in securing the inclusion of discriminated and historically marginalized groups in policymaking. Civil society actors can also contribute to building more responsive state institutions through their engagement for accountability. The feedback loops that are generated as a result of this engagement can contribute significantly to the promotion of citizen-oriented policy implementation while ensuring that development interventions are more effective and sustainable.

Through action at the grassroots level and in hard-to-reach communities, civil society actors can play an important role in complementing state- and market-driven delivery of services. With their knowledge of local contexts, they can help service providers better understand people's needs and demands, inspiring at times remarkable bureaucratic entrepreneurship. Civil society actors can also serve as agents of positive change by fostering social innovation and supporting people in identifying their own solutions to development challenges. In addition, civil society outreach capacity can contribute to transforming harmful attitudes and behaviours while encouraging sustainable practices to take root.

### **Civic space and sustaining peace**

As noted by the Advisory Group of Experts for the 2015 Review of the United Nations Peacebuilding Architecture,<sup>17</sup> a robust and safe civic space is a cornerstone of peaceful societies. In fact, a significant body of evidence shows that countries with a more open and inclusive public sphere are better equipped to constructively address divergences and grievances before they escalate to violence. In contrast, when civic space is compressed or left open only for certain segments of society, dissatisfaction and disillusionment can mount to the point where they become intractable. Civil society actors can facilitate constructive exchanges between state institutions and citizens, thus helping to combat feelings of disempowerment and alienation that may

lead to radicalization. Furthermore, under appropriate circumstances, civil society engagement can serve an important mediation function, fostering greater understanding and cooperation across different social groups. In conflict, post-conflict and fragile contexts, civil society actors often play a critical role in the delivery of essential services and contribute, in this way, to stability and resilience. In addition, they can leverage their community presence to shift social norms and behaviours, promote a culture of peace and discourage the use of violence as a means to deal with conflict.

## **National legal and regulatory frameworks affecting civic space**

In most countries, constitutional law recognizes the right to participate in the conduct of public affairs and the fundamental freedoms relating to opinion, expression, peaceful assembly and association, along with other rights. Nonetheless, the actual scope and meaning of these rights is determined in practice by a complex web of lower-level laws, regulations, administrative directives, procedures and codes of conduct, which can vary significantly over time. Together with relevant jurisprudence, these normative frameworks play a critical role in delineating the permissible modalities of participation in public life, the terms of the state authority over civil society activities and the conditions of operation of different types of civil society organizations. Laws that specifically regulate various forms of civic organizing obviously have a very significant and direct impact on civic space. However, it is important to note that, depending on the country's legal tradition, civic space may also be affected by provisions under the civil and penal code, public administrative law, tax law and labour law, among others.

### **Laws specifically regulating civil society organizations**

Below, guidance is provided on how to unpack legislation specifically aimed at regulating

<sup>17</sup> United Nations (2015). Report of the Advisory Group of Experts for the 2015 Review of the United Nations Peacebuilding Architecture on [The Challenge of Sustaining Peace](#). New York, USA.

the operations of civil society organizations, including issues such as establishment and dissolution procedures, the government’s supervisory role vis-à-vis entities operating in the civil society sphere, and the ability of civil society organizations to conduct a range of activities.

### Legal organizational forms

A country’s legislative framework determines the different legal forms a civil society organization can take. These can vary greatly from country to country but may include, among others, the following categories.

**Table 2** Possible typologies of civil society organizations

Typology	Key features
<b>Non-governmental organization</b>	While there is no single definition, a non-governmental organization is often broadly defined to include both membership and non-membership organizational forms and a wide range of permissible purposes.
<b>Association</b>	Typically, membership-based entities. These may include voluntary associations, trade and professional associations, political parties, clubs and a wide range of other entities such as faith-based or inter-faith organizations.
<b>Foundation</b>	Not membership-based, often property-based, entities that have at their disposal assets or an endowment, make grants to other organizations or carry out their own projects and programmes.
<b>Trust</b>	A legal device used to set aside money or property of one person for the benefit of one or more persons or organizations.
<b>Charity</b>	Voluntary organizations common in several Commonwealth countries.
<b>Specialized forms</b>	This category may include public benefit companies as well as funds, centres, institutes, societies or humanitarian organizations.

Regardless of the organizational form, all civil society organizations as defined for the purposes of this brief share a fundamental defining characteristic that distinguishes them from for-profit organizations: the **non-distribution principle** (or constraint). This principle prohibits the distribution of net earnings, profits or assets to any founder, director, officer, member, employee or donor in order to ensure that all earnings, profits or assets be used to support the not-for-profit purposes of the organization. The constraint does not prevent the payment of reasonable compensation for work performed by employees or others on behalf of the organization, although the definition of ‘reasonable’ is debated in some contexts. To reinforce this constraint, national law may include prohibitions on direct or indirect private benefit such as prohibitions on private inurement and self-dealing, which may take place when an insider receives special personal or unreasonable benefit as a result of his or her position within the organization. Such

provisions can also specify a requirement that officers, board members and employees avoid any actual or potential conflict between their personal or business interests and the interests of the organization.

It is important to note that in many contexts, different types of organizations may be regulated by different pieces of legislation, which may or may not be fully consistent with each other in terms of overall guiding principles. Therefore, the first step in understanding the legal framework regulating civil society in a certain context should be a scan of applicable regulatory regimes and their implications for various forms of organizing.

### Establishment

Typically, the law defines a set of requirements for the establishment of a civil society organization. These requirements vary

significantly depending on the organizational form but may address the following elements: the required minimum number of members, the required minimum amount of initial assets, who may serve as founders, what purposes are permissible for the organization to pursue and what documents are required to establish the organization. Once established, there are then two main systems through which a civil society organization can be recognized as a legal entity:

#### Declaration system

The recognition of legal person status flows automatically upon establishment (that is simply as a consequence of having a written charter) by completing a notification procedure to a relevant public entity or registry.

#### Registration system

The recognition of legal person status flows from the approval of an application by an authority designated by the law (which may be a part of the government, a court or an independent commission).

### BOX 1. Alignment of the declaration system with human rights standards

In a review of international good practices, the Special Rapporteur on the freedoms of peaceful assembly and association observes that the declaration system should be considered to be more in line with human rights standards noting that “a ‘notification procedure’, rather than a ‘prior authorization procedure’ that requests the approval of the authorities to establish an association as a legal entity, complies better with international human rights law and should be implemented by states.”<sup>18</sup>

Foreign-based or foreign-controlled civil society organizations can typically be established in one of two ways: as a branch

office or as an affiliate (or subsidiary). In most countries, some form of registration is required as a condition for a foreign organization to establish operations. In some instances, foreign organizations may be granted certain privileges (such as exemption from the tax or labour laws of the host country). However, foreign organizations may also be subject to additional requirements and limitations (as is increasingly the case in recent years).

### Dissolution

The termination and dissolution of a civil society organization may follow the voluntary decision of its members or result from a government or court order (involuntary termination). In actual practice, as observed across countries, grounds for issuing such an order may include a declaration of bankruptcy, inactivity (sometimes established on the basis of a failure to file reports) and the failure to remedy a violation of law. However, involuntary termination should be a measure of last resort. As such, it should only follow the most serious violations and only after the civil society organization has been notified and given a meaningful opportunity to correct the issue.

### BOX 2. Involuntary termination and human rights standards

Involuntary termination is the severest type of restriction on the freedom of association. For this reason, as noted by the Special Rapporteur on the freedoms of peaceful assembly and association “it should only be possible when there is a clear and imminent danger resulting in a flagrant violation of national law, in compliance with international human rights law. It should be strictly proportional to the legitimate aim pursued and used only when softer measures would be insufficient.”<sup>19</sup>

<sup>18</sup> UN Human Rights Council (2012). Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on [best practices that promote and protect the rights to freedom of peaceful assembly and of association](#) (A/HRC/20/27), para. 58. Geneva, Switzerland.

<sup>19</sup> UN Human Rights Council (2012). Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on [best practices that promote and protect the rights to freedom of peaceful assembly and of association](#) (A/HRC/20/27), para. 75. Geneva, Switzerland.

The law typically provides for what happens to the remaining assets of a civil society organization after the payment of creditors. The presumption should be that these assets will be channeled to another organization with the same or similar purposes. In exceptional cases, if an appropriate organization does not exist, the law may allow assets to revert to the state. In this case, however, there should be a requirement that assets be used for purposes similar to those of the dissolved organization. The prohibition against reversion of assets prevents them from being claimed by the insiders of the dissolved organization.

### Structure and governance

The law will often address a certain number of internal governance requirements that are broadly applicable to all types of civil society organizations. These may include provisions regarding the need to have a defined mission, organizational structure and decision-making processes. In addition, the law may detail governance requirements that are more specific to certain types of organizations, such as provisions addressing the structure and functioning of members' assemblies in the case of associations, or boards of directors in the case of foundations.

### Permissible activities

In some cases, the law may contain provisions regarding the types of activities that civil society organizations can engage in. These provisions may include, for instance, limitations to electioneering activities, such as campaigning during electoral processes or fundraising for political parties or candidates. Other limitations may apply to the scope of permissible economic activities. Often, different limitations will apply to different types of organizations, for instance as a function of whether an organization is eligible for tax benefits due to its status as a public benefit entity or charity.

### BOX 3. Restrictions of permissible activities

In commenting on the matter of permissible activities for civil society organizations, the Special Rapporteur on the freedoms of peaceful assembly and association notes that civil society organizations “should enjoy, inter alia, the rights to express opinion, disseminate information, engage with the public and advocate before governments and international bodies for human rights, for the preservation and development of a minority’s culture or for changes in law, including changes in the constitution”.<sup>20</sup>

### Reporting requirements

The law will often rely on reporting requirements as a basic tool for achieving accountability and transparency. These requirements may include activity and financial reports to be filed on a regular basis with various agencies, such as the general organ supervising formal civil society organization (court, ministry, local administration, or specialized organ), tax authorities and relevant licensing authorities. However, reporting obligations should be applied in a way that respects and protects civic freedoms, and any obligations should be commensurate with the benefits the organization receives from the state. Consequently, organizations that do not receive state benefits and do not engage in public fundraising may be appropriately exempt from reporting or subject to simplified requirements. Organizations receiving tax exemptions and/or engaged in significant public fundraising will likely be subject to more significant reporting requirements.

<sup>20</sup> UN Human Rights Council (2012). Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association on [best practices that promote and protect the rights to freedom of peaceful assembly and of association](#) (A/HRC/20/27), para. 64. Geneva, Switzerland.

### BOX 4. Civil society self-regulation

International law creates a presumption against any state regulation or restriction that would amount to undue interference with recognized rights. While a certain level of external oversight may be necessary to ensure transparency and accountability, international human rights principles require states to refrain from adopting arrangements that disproportionately target or burden civil society organizations. Furthermore, civil society organizations should be permitted to set higher standards of conduct through voluntary self-regulation.<sup>21</sup>

### Selected examples of other laws affecting civil society

Laws or regulations governing various types of not-for-profit entities are only one instance of the vast body of rules affecting civil society. The table below provides additional examples of

normative frameworks (which may result from a single piece of legislation or several provisions across multiple regulations) with a direct impact on civic space.

## State obligations in relation to civic space

By becoming parties to international human rights treaties and conventions, states become duty bearers with a series of legal obligations to rights-holders. These obligations are both negative (i.e. to refrain from interfering with recognized rights) and positive (i.e. to protect and promote the rights in question). The following sections discuss how the state's responsibilities to respect, protect and fulfil human rights relate to the issue of civic space.

### The responsibility to respect

The responsibility to respect requires states to refrain from unduly interfering with or curtailing

**Table 3** Examples of normative frameworks with a direct impact on civic space

Typology	Key features
<b>Access to information</b>	Defines the general right of access to information and its applicability. Determines the type of records that may be requested and the processes necessary to obtain them as well as the circumstances that justify a refusal to release public information. Outlines public institutions record keeping responsibilities and other transparency requirements. In some cases, it may provide for the establishment of an independent oversight body.
<b>Peaceful assembly</b>	Provides principal definitions and categories of assemblies, guidance on notification or authorization regimes and a list of grounds for restrictions as to the time, place and manner of a demonstration. Outlines the role and duties of police and other law enforcement officials, including issues related to the use of force. Regulates access by non-participant third parties, including journalists and other media personnel.
<b>Human rights defenders</b>	Provides a definition of human rights defenders. Clarifies how different human rights and fundamental freedoms apply to human rights defenders and their work. Outlines the range of protections to which human rights defenders should be entitled as well as the obligations of public authorities with respect to human rights defenders, particularly in terms of preventing and redressing undue interference, intimidation and reprisal.

<sup>21</sup> The “[Resilient Roots](#)” initiative for instance is a programme led by CIVICUS to promote the constituent accountability of civil society organizations. Other initiatives include “[Accountable now](#)” and the “[Global Standard for CSO Accountability](#)”.

the enjoyment of recognized rights. A key question in relation to this responsibility is, therefore, what circumstances (if any) allow for the lawful limitation or derogation of recognized rights.<sup>22</sup>

International human rights law recognizes that limitations to the freedoms of expression, assembly and association may be legitimately imposed in order to protect national security, public safety and order, public health or morals, and the reputation, rights and freedoms of others. However, in order to comply with human rights standards, these limitations must be provided for by law and be genuinely “necessary”, which means – among other things – that they should respond to a pressing public need and be proportionate to their stated aim.<sup>23</sup> As clarified by the “Siracusa Principles” adopted by the UN Economic and Social Council in 1984,<sup>24</sup> the scope of a limitation referred to in the ICCPR can never be interpreted in such a way that would jeopardize the essence of the right concerned. Furthermore, no limitation should be applied in an arbitrary or discriminatory manner, and mechanisms should be available to challenge a limitation and obtain adequate remedy in case of abusive application.

The freedoms of expression, peaceful assembly and association as well as the right to participation in the conduct of public affairs are derogable in situations of public emergency which “threaten the life of the nation” pursuant to Article 4 of the ICCPR.<sup>25</sup> However, any derogation measures adopted under these circumstances should be “strictly required by

the exigencies of the situation” (and therefore proportionate and temporary), consistent with other state obligations under international law and non-discriminatory. As stated in the above-mentioned Siracusa Principles and confirmed by the subsequent General Comment No. 29 of the UN Human Rights Committee,<sup>26</sup> laws governing states of emergency must provide for prompt and periodic independent review of the need for derogation measures. Furthermore, effective remedies must be available to affected persons claiming that the exigencies of the situation do not strictly require derogation measures.

### BOX 5. Strategies actively aimed at restricting civic space

Strategies actively aimed at undermining civic space may involve unwarranted regulatory interventions (e.g. excessive registration and reporting requirements as well restrictions to permissible activities and sources of funding) but may also take the form of administrative and judicial measures. Examples of the latter include exorbitant fines or revocation of registration for minor instances of non-compliance with administrative requirements as well as strategic lawsuits (e.g. based on claims of corruption or defamation). In addition, civic space can be undermined through different acts of intimidation and reprisal, including smear campaigns, harassment, arbitrary detention, enforced disappearance and extrajudicial killings.

<sup>22</sup> Article 4, paragraph 2, of the ICCPR explicitly prescribes that no right in the following articles may be derogated: article 6 (right to life), article 7 (prohibition of torture or cruel, inhuman or degrading punishment, or of medical or scientific experimentation without consent), article 8, paragraphs 1 and 2 (prohibition of slavery, slave-trade and servitude), article 11 (prohibition of imprisonment because of inability to fulfil a contractual obligation), article 15 (the principle of legality in the field of criminal law, i.e. the requirement of both criminal liability and punishment being limited to clear and precise provisions in the law established and applicable at the time of the act or omission, except in cases where a subsequent law imposes a lighter penalty), article 16 (the recognition of everyone as a person before the law), and article 18 (freedom of thought, conscience and religion).

<sup>23</sup> For instance, the “respect of the reputations of others” may not be used to protect the state and its officials from the public’s critical views or dissenting opinions, or to penalize media outlets, publishers or journalists for reporting or disseminating such views or opinions, as they are critical to the public’s right to know.

<sup>24</sup> UN Human Rights Commission (1984). The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (E/CN.4/1985/4). Siracusa, Italy.

<sup>25</sup> UN jurisprudence on permissible derogations under states of emergency emphasizes that not every disturbance or catastrophe qualifies as a public emergency threatening the life of the nation and justifying derogations under ICCPR Article 4. It is the responsibility of the state to carefully consider the justification for invoking ICCPR Article 4 and why such a measure is necessary and legitimate in the given circumstances.

<sup>26</sup> UN Human Rights Committee (2001). General Comment No. 29 (art. 4): Derogations during a State of Emergency (CCPR/C/21/Rev.1/Add.11). Geneva, Switzerland

## The responsibility to protect

States have a duty to protect individuals and groups against human rights violations by public officials and state agents as well as third parties. This requires enacting mechanisms that enable relevant authorities to prevent, investigate, punish and redress violations as appropriate.

The protection of freedoms related to civic space will require at the very minimum three conditions. First, there should be a normative framework fully recognizing these freedoms and establishing adequate guarantees for their exercise. Second, there should be effective law enforcement and adjudication systems with the ability to ensure the implementation of existing laws and policies but also the capacity to challenge discriminatory norms and address gaps in legislation, if necessary. And finally, there should be strong monitoring mechanisms empowered to track violations and propose reforms where needed (ideally with respect to both regulatory frameworks and institutional practice). Dedicated protective measures will be needed in some areas. This is for instance the case of provisions to ensure the accountability of law enforcement authorities for the use of excessive force against peaceful protestors. Other examples include mechanisms to ensure the safety of journalists and media personnel in the exercise of their work (including where needed via media privilege) and specific safeguards that may be established to ensure the protection of human rights defenders, among others.

In case of rights violations, international human rights law recognizes the right to an effective remedy before a competent domestic body.<sup>27</sup> As a result of this right, the state is obligated to bring perpetrators to justice and ensure non-recurrence by taking appropriate judicial and legislative measures as required. The right to an effective remedy also implies that the victim of a violation is entitled to reparations for the harm suffered, whether through restitution (release from detention or restitution of property), rehabilitation (in the form of legal, medical, psychological and social measures), or compensation (indemnification for financial or non-financial damages). While the responsibility to protect human rights is a primary duty of states, when a state fails in this duty, recourse is sometimes available to international human rights protection mechanisms. However, as a rule, remedies at the supranational level are accessible only if all available and effective domestic avenues of redress are exhausted, and in order to address “consistent patterns of gross and reliably attested violations.”<sup>28</sup>

## The responsibility to fulfil

The responsibility to fulfil means that states must take positive action to facilitate the enjoyment of human rights, through legislative, administrative, budgetary, judicial and other measures as appropriate. In other words, the realization of human rights must become the object of policies deliberately aimed at improving them. A non-exhaustive list of regulatory measures that may contribute to stronger civic spaces includes the following.

<sup>27</sup> See ICCPR art. 2.3, the European Convention for the Protection of Human Rights and Fundamental Freedoms (art. 13), and the Inter-American Convention on Human Rights (art. 7.6)

<sup>28</sup> UN Human Rights Council (2007). Resolution on Institution-building of the UN Human Rights Council (A/HRC/RES/5/1), para. 85. Geneva, Switzerland.

**Table 4** Examples of regulatory measures to promote an enabling civic space

Primary focus	Potential elements
<b>Creating an enabling fiscal environment for civil society organizations</b>	Tax incentives are one of the main instruments to promote civic organizing and the financial sustainability of civil society organizations. While tax systems differ from country to country, tax incentives include exemptions and preferential tax treatment for public benefit and other types of organizations; tax deductibility for both individual and corporate donations (whether from domestic or foreign sources); and the possibility for civil society organizations to engage in economic activities with favourable tax treatment.
<b>Supporting social innovation led by civil society actors</b>	Dedicated public support infrastructures – such as social innovation hubs or public policy labs – can encourage civil society led social innovation and provide civil society actors with access to public funding. Legislation on “public-benefit” or “community interest companies” may make it easier for social ventures to raise capital while retaining their social mission. Instruments such as “social stock exchanges” can integrate traditional stock market structures with social enterprises and impact investing to support socially minded organizations.
<b>Opening avenues for citizen-initiated legislative processes</b>	Legislation on popular initiatives establishes a right of legislative initiative for citizens (generally limited to citizens who have the right to vote) upon the fulfillment of certain conditions. In a few instances, states also extend this right to collective civil society actors such as groups of citizens, institutions or associations. Some countries also provide for the possibility of citizen-initiated referenda, whereby citizens may have an issue presented for a binding vote at the sub-national or national level.
<b>Creating opportunities for public engagement in policymaking</b>	Regulatory frameworks may provide space for public engagement in policymaking through different channels such as formal public hearings held by public bodies or deliberative processes (e.g. citizen assemblies). These frameworks may mandate the sharing of draft policy with the public, require a minimum time period for public comment and encourage government feedback on public input. Public consultation frameworks may be broad or restricted in scope (e.g. social partners and labour policy, indigenous communities and free, prior and informed consent (FPIC) processes).
<b>Creating conditions for public oversight of state institutions</b>	Strong regulatory frameworks on access to information are an indispensable foundation for public oversight of state action. Other public oversight mechanisms can take the form of institutionalized social audits, citizen report cards and citizen oversight committees, among others. These mechanisms can, for instance, enable citizens to undertake systematic audits of public services and programmes, have direct input in the different phases of budget cycles (from the initial formulation to implementation monitoring) and review public procurement processes.

## Programmatic entry points at the country level

This section provides an overview of programming entry points focused on strengthening legal frameworks for civic space as well as other complementary interventions that could be undertaken in support of civic space more broadly.

### Assessment of legal and institutional environments

Assessments of the legal and institutional environment should be the starting point for determining programming interventions on civic space at the national level. Sound assessments can serve as a tool to identify problematic regulatory provisions, but also as a basis for advocacy and as a way to initiate policy dialogue with relevant stakeholders. A variety of tools and methodologies to assess legal frameworks for civic space have been developed, building on several decades of efforts by governments, multilateral institutions and civil society organizations. These tools measure the impact of laws and regulations on civil society as well as different aspects of civil society's strength and viability. Some examples of key resources are provided below.

#### The ICNL Civic Freedom Monitor

The ICNL Civic Freedom Monitor provides up-to-date information and analysis on legal issues affecting civil society and civic freedoms, including freedoms of association, expression and peaceful assembly, in more than 50 countries. Each country report provides an overview of key legal issues relating to civic freedoms, with a focus on legal barriers to civil society activity. The Monitor is complemented by the ICNL Digital Legal Library, a searchable online database which houses a collection

of nearly 4,000 laws, reports and other civil society legal resources from more than 200 countries and territories.

#### The CIVICUS Monitor

The CIVICUS Monitor is a research tool that provides close to real-time data on the state of civil society and civic freedoms in 196 countries. The data is generated through collaboration with more than 20 civil society research partners and input from a number of independent human rights evaluations. The CIVICUS Monitor also includes a regularly updated Watch List of countries regarded as facing serious threats to civic space.<sup>29</sup>

### Supporting policy dialogue and reform

In some cases, UNDP and other international organizations may be in a position to leverage their convening ability and technical expertise to facilitate dialogue around policy reform. In this context, it will be important to ensure the involvement of a broad spectrum of stakeholders, given the multidimensional and cross-sectoral nature of civic space. A particular emphasis should be placed on facilitating the meaningful participation of an appropriately diverse range of civil society representatives. Once policy reforms are enacted, UNDP and other international organizations can play a supportive role in their implementation through a variety of interventions, including the delivery of training, the development of the operational mechanisms required for roll-out and support to on-going monitoring.

In many countries, there is a designated ministry or department in charge of affairs related to non-governmental organizations. Where they exist, such bodies are natural interlocutors for policy dialogue and reform. However, there are also other state institutions that can play a key role in this space. Two illustrative examples are mentioned below.

<sup>29</sup> Analogous tracking initiatives with a regional focus include the [European Civic Space Watch Alerts](#) hosted by the European Civic Forum and the [Civic Space Guardian](#) initiative implemented by Directorio Legislativo in Latin America and the Caribbean. Other initiatives, such as the [CSO Sustainability Index Explorer](#), combine environmental and internal capacity elements to assess prospects for civil society viability in a given context.

## Parliaments

Parliaments can play a critical role in relation to civic space by advancing legislation to secure the full enjoyment of civic freedoms, bringing civil society perspectives to bear more directly on national policymaking and holding government accountable for its responsibilities to respect, protect and fulfil. Often, parliamentary committees on human rights will provide a natural entry point for collaboration on these issues.

## National Human Rights Institutions

Due to their mandate and as independent state bodies, national human rights institutions are natural champions of civic space. The 13th International Conference of the Global Alliance of National Human Rights Institutions in 2018 adopted the “Marrakech Declaration”<sup>30</sup>, which sets out priority actions to advance civic space and ensure the protection of human rights defenders. This strategy can serve as a basis for dialogue and collaborative action.

### BOX 6. Model laws as a starting point for policy dialogue

While it is critical for policymaking on civic space to be context-specific and rooted in local ownership, model laws informed by international human rights standards and good practice can serve as a useful starting point for dialogue. Possible blueprints have been developed not only for laws regulating the civil society sector but also for legislation on access to information as well as legislation on the recognition and protection of human rights defenders.<sup>31</sup>

## Leveraging global processes for local impact

Global processes can provide strategic openings to promote civic space at the national level. The SDGs are a natural starting point for these efforts. In addition, a number of international multistakeholder initiatives have been quite effective in encouraging the adoption of national commitments related to transparency, accountability and inclusion, while bringing together different segments of the state, the market and civil society into safe spaces of participatory dialogue. Among other things, UNDP and international organizations can connect national counterparts with relevant global processes, support the meaningful participation of civil society actors in these initiatives and assist with the definition and implementation of national commitments. Examples of relevant initiatives are provided below.

## Voluntary National Reviews

Agenda 2030 requires member states to “conduct regular and inclusive reviews of progress at the national and sub-national levels”. These reviews, which are presented at the High-level Political Forum on Sustainable Development, can provide useful spaces of participation and dialogue as well as opportunities to address gaps between the national reality and the ideals of inclusion and participation embedded in the SDGs.<sup>32</sup>

<sup>30</sup> For more information, see [The Marrakech Declaration. Expanding the civic space and promoting and protecting human rights defenders, with a specific focus on women: The role of national human rights institutions](#)

<sup>31</sup> See for instance on access to information: Commonwealth Secretariat (2017, updated from 2001). [Model Freedom of Information Bill](#). London, UK; art. 19 (2001). [Freedom of Information Model Law](#). London, UK; Organization of American States (2010). [Model Inter-American Law on Access to Public Information](#). San Jose, Costa Rica; African Commission on Human and Peoples’ Rights (2013). [Model Law on Access to Information for Africa](#). Banjul, The Gambia. And on human rights defenders: International Service for Human Rights (2016). [Model National Law on the Recognition and Protection of Human Rights Defenders](#). Geneva, Switzerland.

<sup>32</sup> For more information see the UNDESA webpage on [Voluntary National Reviews](#).

## The Open Government Partnership

The Open Government Partnership (OGP) is an alliance of 78 national governments and over 80 local governments, which works alongside civil society organizations to develop commitments by state institutions to promote the ideals of open government. OGP has prioritized the promotion of ambitious policy actions to expand civic space and, according to OGP data, a total of 40 OGP countries have made over 100 civic space related commitments.

## Engaging international human rights mechanisms

Various accountability processes have been established as part of the international human rights machinery to ensure that states uphold their international obligations, including those related to civic space. UNDP and other international organizations can provide different forms of support to the work of relevant human rights mechanisms, such as committees, special rapporteurs and working groups. Additionally, they can play a facilitating role in the preparation of state party reports to UN mechanisms and assist state institutions in following up on recommendations. Furthermore, UNDP and other international organizations have an important role to play in building the capacity of civil society actors to effectively engage with international human rights mechanisms. Key opportunities in this area are outlined below.

### Treaty bodies

The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. Among other things, these bodies are responsible for reviewing periodic reports submitted by state parties and provide recommendations to the country on how to address gaps in the implementation of relevant human rights obligations.<sup>33</sup>

## Special procedures

The special procedures of the Human Rights Council are independent experts appointed to report and advise on human rights from a thematic or country-specific perspective. These include UN special rapporteurs, independent experts and working groups and cover issues directly related to civic space, such as the rights to freedom of expression, association and assembly as well as other rights linked to meaningful participation in public life.<sup>34</sup>

### Universal periodic review

The Universal Periodical Review (UPR) is a peer-review process that takes place in the framework of the Human Rights Council and assesses the human rights situation of each UN member state every 4.5 years. Recommendations related to civic space have been made throughout all three cycles of the UPR since its creation in 2008 and have led various member states to make voluntary pledges to further address this issue.<sup>35</sup>

## Supporting advocacy and reshaping public perception

The development and implementation of enabling normative frameworks for civic space is significantly influenced by political incentives.

While many factors contribute to shaping these incentives, they can be seen in part as a function of the extent to which citizens regard civic space as critical to a healthy public life. UNDP and other international organizations can contribute to raising awareness of the importance of civic space among the general public by highlighting the critical role of civil society organizations in peace and development, promoting a culture of participation and dialogue and engaging with key opinion makers who have the potential to significantly impact these issues. A number of potential entry points are mentioned below.

<sup>33</sup> For more information, see the OHCHR webpage on [monitoring the core international human rights treaties](#).

<sup>34</sup> For more information, see the OHCHR webpage on [special procedures of the Human Rights Council](#).

<sup>35</sup> For more information, see the OHCHR webpage on [Universal Periodic Review](#).

## Public outreach

Public outreach can build on the advocacy opportunities offered by UN international days on a range of topics but also contribute to amplifying the messages of campaigns led by civil society actors such as the Civic Space Initiative<sup>36</sup> and the Civic Charter<sup>37</sup>. In addition, targeted outreach can be carried out with a focus on key actors with the potential to significantly impact the debate on civic space, such as the media and the private sector.<sup>38</sup>

## Civic education

Steps can be taken to ensure that a strong focus on civic space issues is built into programmes on education for sustainable development carried out within the framework of SDG target 4.7. The related content could highlight, among other things, the importance of civic space for a vibrant and resilient democracy as well as rights and responsibilities related to the protection and promotion of civic space.

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<sup>36</sup> For more information, see the ICNL page: <https://www.icnl.org/our-work/global-programs/the-civic-space-initiative>.

<sup>37</sup> For more information, see: <https://civiccharter.org/>

<sup>38</sup> CIVICUS developed a useful resource on engaging media around civic space entitled [Guide to Reporting Civic Space: Media Toolkit](#). Helpful resources on business and civic space include: The B Team (2018). [The Business Case for Protecting Civic Rights](#); UN Working Group on Business and Human Rights (2017). [Human Rights Defenders and Civic Space: The Business and Human Rights Dimension](#). Geneva, Switzerland; Business and Human Rights Resource Centre and International Service for Human Rights (2018). [Shared Space Under Pressure: Business Support for Civic Freedoms and Human Rights Defenders. A Guidance for Companies](#). Geneva, Switzerland.

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