



Legal Frameworks for Civic Space

A PRIMER

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.”¹ 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.² As explained in the UN Human Rights Committee’s General Comment No. 25 (1996),³ 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,

¹ 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.

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

³ 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. 34⁴) as well as several other international and regional instruments⁵. 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.⁶ 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.

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. 37⁷) and several other international and regional instruments⁸. 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 21.⁹

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.¹⁰ 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

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

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

⁶ 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”.

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

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

⁹ 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”.

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

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.¹¹



“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

¹¹ 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) ¹²
Right to equality and non-discrimination	UDHR (art. 7), ICCPR (art. 26) ¹³
Rights to privacy, anonymity, and protection of personal data	UDHR (art. 12), ICCPR (art. 17) ¹⁴
Right to freedom of thought, conscience and religion	UDHR (art. 18), ICCPR (art. 18) ¹⁵

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

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).¹⁶

The instrumental case for civic space

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