

Expanding CIVIC SPACE

Addressing economic actors and forces

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Introduction

The Fair, Green and Global (FGG) Alliance aims to create socially just, inclusive and environmentally sustainable societies by strengthening civil society actors capacity to lobby and advocate, and hold policymakers and companies to account. The Alliance involves six member organisations based in the Netherlands (ActionAid Netherlands, Both ENDS, the Clean Clothes Campaign, Milieudefensie/Friends of the Earth Netherlands, SOMO and the Transnational Institute) as well as some 1028 partner organisations, networks and movements worldwide. The Alliance works in strategic partnership with the Dutch Ministry of Foreign Affairs as part of its exemplary Dialogue and Dissent policy framework, which highlights the importance of enabling CSOs to ‘effectively voice alternative or dissenting views in a dynamic and increasingly global context’.

CIVIC SPACE

Essential to the vision of the Fair, Green and Global Alliance is a capacious understanding of civic space. A thriving and open civic space entails a political, legal, social and economic environment that not only enables, but encourages civil society actors to exercise their rights, access information, voice their views, organise, engage in and, most importantly, meaningfully influence their world. In this sense, a truly open civic space depends on even more than just respect for freedom of expression, association and assembly, or the rule of law and access to justice (Sustainable Development Goal 16). A thriving, open civic space can only exist when all human rights are respected and people have decisive influence over their lives, their societies and the environment.

1. Economic actors and forces contribute to the dynamics of civic space

SHRINKING CIVIC SPACE

For billions of people worldwide, speaking out, let alone having decisive influence in society, is difficult, dangerous or simply untenable. People, movements and civil society organisations that are actively working to preserve or create just, inclusive and environmentally sustainable societies often come up against obstacles, restraints or outright repression. They are shut out of a policy dialogue or their demands ignored. Their offices are raided or their meetings shut down. Their bank accounts are blocked or their funding cut off. Their legal cases against wrongdoers linger in courts. They are silenced or slandered, delegitimised or vilified, threatened or even murdered.

In what many have referred to as a global context of ‘shrinking civic space’, the principles of democracy, universal human rights, and the rule of law are under increasing attack. Rising authoritarianism, fundamentalism, nationalism, gender, racial and ethnic discrimination are all contributing to the contraction of civic space in many places. And so too are the myriad laws, policies and decision-making processes at all levels – local, national and international – that afford more power and privilege to the private sector than to people, often exploiting and exacerbating societal divisions.

INCENTIVES TO CONSTRICT CIVIC SPACE

Businesses, investors, financial institutions, and governments – whether in the global North or South – play a role in shaping civic space. That role can be positive when it entails concerted efforts to improve respect for fundamental freedoms and inclusive, democratic processes. But it can also be negative. All too often civic space contracts due to pressure, both direct and indirect, from powerful economic and political interests.

The global economic and financial system – with its emphasis on short-term profit, economic growth and foreign investment – often gives governments and the private sector perverse incentives to constrict civic space and disregard democratic processes. The system creates pressures that are at odds with human rights and Sustainable Development Goals, including the goal of peaceful and inclusive societies.

MULTINATIONALS IN BANGLADESH

Consider the situation of garment workers in Bangladesh who recently claimed civic space en masse, exercising their right to assembly, association, and expression by protesting against wages that don't cover the basic costs of survival. It is no coincidence that most garment workers are women, whose choices and mobility are severely circumscribed by pervasive gender discrimination. The government of Bangladesh has the power to increase the minimum wage rate, but it fears that an increase will result in the loss of foreign business. Like other production countries, it is operating in a global economic context that facilitates a race to the bottom. Buyers (e.g. global brands and retailers) could influence the wage rate — and thereby contribute to both economic and gender equality — by assuring the Bangladeshi government and suppliers of their continued business. But this has yet to happen.

It is against this backdrop that the recent mass mobilisation by garment workers and the subsequent government crackdown must be seen. When garment workers sought to make their voices heard and demand better wages, police responded with violence that resulted in the death of one worker and injuries to many more. Dozens of labour rights activists face criminal charges for involvement in the protests. 11,000 workers were dismissed and thousands of others were blacklisted. At the same time, the government's fears are being confirmed as buyers shift their business to Ethiopia, which has no minimum wage at all. Multinationals create a major incentive for governments to constrict the civic space of workers by prioritising profits over respect for the rights of workers — including labour rights, gender equality, and a living wage — in their supply chains.

FOREIGN INVESTMENT IN MYANMAR

Or consider the agrarian communities of Myanmar, many of whom are marginalised ethnic minorities whose civic space has been shaped for centuries by traditional customary land and resource management systems. There is a clear understanding within and between villages about what land can be used, by whom, for how long, and for what purposes. The systems, which reflect an open civic space for the people who have long relied them, are now under threat from a new national legal framework which aims to facilitate large-scale land acquisition by foreign investors. In 2018 the government amended the Vacant, Fallow, Virgin (VFV) Land Management Law such that anyone occupying or using so-called 'vacant, fallow, or virgin' land was required to apply for an official permit or face eviction and up to two years in jail. The new law essentially criminalises ethnic minorities since about a third of the total land area of Myanmar is classified by the government as VFV land and much of it is used

by them. The law may ease the way for increased foreign investment, but it profoundly shrinks civic space and threatens to take the country further off the route to democracy, peace and inclusive prosperity.¹

In these cases, as in countless others, civic space is shaped by political, legal and social systems, as well as an international economic system in which a variety of actors – both local and global, state and non-state – interact. The conduct of investors, financiers and multinational corporations, no less than the policies and practices of the governments where they operate, helps to determine whether people have a say in and democratic control over their lives, their societies and the natural world.

HUMAN RIGHTS AND DEMOCRACY DERAILED BY ECONOMIC INTERESTS

Accountability of both government and business is thus a crucial component for an open and thriving civic space. Yet impunity for corporate and other business-related human rights abuses is often the norm. Impunity is facilitated by weak rule of law on the national level, both in the host states of multinationals where abuses occur, as well as in home states where abuses abroad are ignored. Home states of rich multinationals decline to hold businesses accountable for human rights violations – a strike to civic space – and even reward them with public financing, tax discounts and other incentives. At the same time, victims of human rights abuses are denied access to justice in their courts, and even if in theory they would have access, the cost of such legal cases is unaffordable for communities. The absence of an international legal framework to hold corporations accountable is no accident: corporations actively create, maintain and use so-called ‘governance gaps’ that allow them to avoid accountability for, and profit from, human rights abuses. Civic space closes when access to justice is denied.

Many trade and investment agreements include an Investor State Dispute Settlement (ISDS) clause which gives corporations the right to sue governments for policies that may affect potential profits. Given that corporate claims can amount to billions of dollars, the mere threat of an ISDS case has been shown to deter governments from acting on behalf of their citizens, including implementing or adopting laws and policies that result from robust, democratic decision-making, serve the public interest, advance human rights and contribute to Sustainable Development Goals. That ISDS essentially punishes governments that are responsive to citizen demands is evident in the decisions of its opaque arbitration panels. In a case against the government of Argentina, for example, the arbitration panel found that ‘people’s right to water must not

be exercised by a public authority in an absolute manner that would defeat the investor's BIT [Bilateral Investment Treaty] rights'. In another case, the panel concluded that the 'consideration of rights of indigenous people under international law... was not part of the tribunal's mandate...'.² The decision suggests that universal human rights – synonymous with a thriving, open civic space – are not relevant when investors' interests are at stake.

2. Fair, Green and Global Alliance approach to defending, preserving and expanding civic space

The Fair, Green and Global Alliance focuses on economic actors and systems, and works for lasting, structural change so that people can not only claim and defend their rights, address misconduct and grievances, but also advance people-driven, inclusive, sustainable approaches to societies, economies and ecosystems.

MUTUAL CAPACITY DEVELOPMENT

Undergirding the Fair, Green and Global Alliance's strategies for defending, preserving and expanding civic space is what we call our 'mutual capacity development' approach. This entails close cooperation and engagement in long-term sustainable relationships with civil society actors worldwide (e.g. CSOs, social movements, NGOs, journalists, academics) through diverse national, regional and global civil society networks. Mutual capacity development shapes not only how the Alliance partners and members cooperate to strengthen each other, but also which capacities the Alliance aims to strengthen. These include not only the absolutely essential capacity for civil society actors to undertake action freely and safely (an enabling environment), but also capacities to muscle a seat at the table (access), to speak with a loud, collective voice (constituency), to build a solid case for their positions (knowledge) and communicate effectively (advocacy skills), and to exert influence (leverage).³

Strengthening these capacities is to expand civic space – to strengthen the power of civil society actors to effectively exercise their rights, voice their views, engage in and meaningfully influence their world. How does mutual capacity development translate into concrete activities of Fair, Green and Global Alliance partners and members for the defence, preservation or expansion of civic space? A union organiser receives emergency funds to challenge trumped up criminal charges and death threats (an enabling environment). A delegation of trade unions and CSOs meets with a multinational about violations of freedom of association in its supply chain (access). Diverse movements come together to organise a mass mobilisation to enhance respect for rural women's land rights (constituency). A community receives information about the financiers behind a harmful project (knowledge). A powerful media campaign draws attention to a sustainable approach to mining (advocacy skills). A lawsuit is filed to ensure that a democratically elected Parliament has decision-making power over trade agreements (leverage).

TOWARD RESPONSIVE DECISION-MAKING AND GREATER ACCOUNTABILITY

Civic space on a global scale, in line with SDG 16, means lobbying and advocating at all levels, from the local to the global, in the North and in the South, for more responsive, inclusive, participatory and representative decision-making. For the Fair, Green and Global Alliance, this includes everything from decision-making about working conditions at an electronics factory to the allocation of Green Climate Fund resources, from the content of a bilateral investment treaty to the details of an infrastructure project.

It also means being able to hold corporations and investors to account for human rights abuses and putting an end to corporate power, privilege and impunity. To that end, Fair, Green and Global partners and members make optimal use of existing laws, rules and regulations, while also collectively campaigning, advocating and lobbying for a binding UN treaty that would prevent and regulate human rights abuses by corporations and provide communities and workers with effective access to justice when rights have been violated. Alongside of these efforts, the Alliance makes use of grievance mechanisms to support communities in accessing justice if their rights are threatened or violated, either directly or indirectly by corporations or investors, including development finance institutions. Such mechanisms, if designed properly, can be used to defend civic space in contexts of weak or inadequate rule of law. The Alliance advocates for stronger and more accessible grievance mechanisms and for policies and practices to prevent and mitigate reprisals against people who use them to defend their rights.

DIVERSE STRATEGIES IN HONDURAS

The case of COPINH in Honduras illustrates how FGG Alliance partners and members use diverse strategies in their efforts to defend civic space. Over several years, Fair, Green and Global partners and members have supported the struggle of COPINH and the Lenca people in Honduras against the Agua Zarca dam. The Alliance provided emergency support to activist Berta Cáceres and others under threat. Following Cáceres's murder, FGG partners in the region convened to analyse trends around attacks on environmental and human rights defenders and the displacement of indigenous peoples, and to strengthen collective protection strategies, protocols and mechanisms. The groups developed an emergency response system to connect the otherwise isolated local Honduran CSOs to networks at national, regional and international levels. Meanwhile, FGG Alliance members organised a delegation of Lenca activists from Honduras to bring their demands directly to decision-makers in the Netherlands and other European countries who had the power to influence the 'civic space' around the Agua Zarca dam project. The Alliance played a pivotal role in

influencing the Dutch and Finnish development banks (FMO and Finnfund) to withdraw their support for the dam and strengthen measures to ensure respect for human rights in its investment activities.

As the threats to COPINH and its members persist, Fair, Green and Global members continue to support the group and convey concerns to Dutch actors. In its active role as Strategic Partner, the Dutch Ministry of Foreign Affairs has had a positive impact, including diplomatic interventions in support of the investigation and prosecution of Cáceres's murderers. Integral to all these efforts is the call by FGG members and partners for structural change that goes well beyond the case of the Lenca people and Agua Zarca, and well beyond the borders of Honduras. FGG Alliance members and partners continue, for example, to mobilise alongside COPINH and hundreds of allies worldwide as part of a global campaign to end corporate impunity. The campaign is advancing a wide range of proposals, including the UN binding treaty and strong rules for business.

3. The value of active partnership with the Ministry of Foreign Affairs

In its role as strategic partner to the FGG Alliance, the Dutch Ministry of Foreign Affairs has been pivotal in helping defend, preserve and expand civic space, both for specific FGG partners as well as civil society actors in general. Among other things, the Ministry has helped ensure a stronger role for civil society in certain decision-making processes that involve Dutch actors; improvements to harmful features of trade, investment and tax policies; and new measures to improve accountability of corporations and financial institutions both in the Netherlands and beyond. For example, the Dutch embassy in Costa Rica has played a valuable role in supporting civil society in Central America, while the embassies in Uganda and Pakistan have proactively engaged CSOs in their plans and discussions.

Other examples include the *LAND Dialogue* and *Breed Handelsberaad*, two important platforms set up by the government to include civil society in discussions about global land and trade issues. Both platforms exist on the principle that a dissenting voice deserves a seat at the table. Information is shared, in-depth debate is encouraged, and participants can agree to disagree. The *LAND Dialogue* also welcomes input from civil society organisations from other parts of the world. Thanks to the platform, knowledge and awareness about land governance issues has grown and mutual understanding between participating parties has increased. Similarly, the financial organisations that manage Dutch public funds (including FMO and Atradius DSB, the Dutch export credit agency) actively engage in dialogue with Fair, Green and Global Alliance members. These dialogues have been important for the adoption and improvement of complaint mechanisms which help expand civic space by giving civil society actors a means to voice their concerns and ensure accountability.

5 WAYS TO EXPAND CIVIC SPACE

The Netherlands can take pride in being one of the most open countries in the world, with a strong history of democracy, respect for human rights and the rule of law. The ongoing commitment and active efforts of the Dutch government to support and expand a thriving civic space is critically important, especially as a growing number of countries and political parties both near and far reject universal rights and democratic principles. The Dutch government can bolster and broaden its efforts to expand civic space by using both its direct power and indirect influence to that end. The Fair, Green and Global Alliance encourages the government to:

- 1 Work proactively to close ‘governance gaps’ and embed corporate accountability into law in the Netherlands, Europe and internationally, while also implementing and strengthening existing rules, regulations, standards, and mechanisms that guarantee civic space in relation to both state and non-state actors.** Examples of new law include mandatory corporate human rights due diligence (following the French example) and a UN binding treaty on business and human rights. Existing mechanisms include the OECD Guidelines for Multinational Enterprises, human rights clauses in preferential and other trade agreements (e.g. GSP, GSP+ and EBA), and grievance mechanisms (e.g. the OECD National Contact Point, Independent Accountability Mechanisms of development finance institutions, and mechanisms of diverse sectoral multi-stakeholder initiatives).
- 2 Improve policy coherence within all policy areas relevant for trade, investment and financial relations of the Netherlands with other countries.** All existing and new policies should respect and promote human and environmental rights, and guarantee space for civil society actors to make themselves heard and hold policymakers and companies to account. The Ministry of Foreign Affairs should take into account the potential impact of its trade policies and practices on the ability of civil society actors to act freely and safely, and act accordingly. It should also continue to use its influence on other governmental and private actors, in the Netherlands and internationally, to convince them of the need for economic policies and practices that expand rather than constrict civic space, and support them where necessary.

3 Continue to celebrate the value of dialogue and dissent as essential to peaceful, democratic, inclusive societies and a hallmark of a thriving and open civic space. This includes funding and broadly supporting the work of civil society actors to defend, preserve and expand civic space by addressing the economic actors and forces that affect it.

4 Ensure space for civil society actors both inside and outside decision-making spaces. While some civil society actors are struggling to take their rightful seat at the table, others may opt to remain ‘outside’ – refusing a seat when the table is profoundly uneven. Both must also be able to freely and safely make their voices heard, and influence decisions. The Ministry of Foreign Affairs can acknowledge the legitimacy of both of these actors and make sure that there are mechanisms in place for all people’s voices to be heard in matters that affect them.

5 Continue diplomatic support and pressure, including through the embassies, to push proactively to expand civic space and to protect the freedom and safety of environmental and human rights defenders. In line with the valuable examples set in Costa Rica, Kenya and Uganda, Dutch embassies could continue to actively engage with civil society actors, including jointly strategising with them on an effective approach towards repression or to shed light on the human rights situation during trade missions.



Notes

1 For more information, see <https://www.tni.org/en/article/a-declaration-of-war-on-us>

2 See https://www.tni.org/files/download/licensed_to_grab.pdf

3 For more detail, see: <https://fairgreenandglobal.org/news/fggs-newest-publication-on-mutual-capacity-development-online>

TO READ MORE:

[ActionAid. Attacks on civic and democratic space](#)

[TNI. On shrinking space: a framing paper](#)

[Friends of the Earth International. We defend the environment, we defend human rights](#)

Sustainable Development Goal 16

GOAL:

Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.



FACTS:

- Corruption, bribery, theft and tax evasion cost some US \$1.26 trillion for developing countries per year; this amount of money could be used to lift those who are living on less than \$1.25 a day above \$1.25 for at least six years
- At least 1,019 human rights defenders, journalists and trade unionists have been killed in 61 countries since 2015. This is equivalent to one person killed every day while working to inform the public and build a world free from fear and want.
- The rule of law and development have a significant interrelation and are mutually reinforcing, making it essential for sustainable development at the national and international level.

TARGETS:

16.3 Promote the rule of law at the national and international levels and ensure equal access to justice for all

16.6 Develop effective, accountable and transparent institutions at all levels

16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels

16.8 Broaden and strengthen the participation of developing countries in the institutions of global governance

16.10 Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements

16.A Strengthen relevant national institutions, including through international cooperation, for building capacity at all levels, in particular in developing countries, to prevent violence and combat terrorism and crime

SOURCE:

<https://www.un.org/sustainabledevelopment/peace-justice/>
<https://sustainabledevelopment.un.org/sdg16>

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