No news is bad news

Exploring how financial institutions can strengthen human rights risk assessments of business activities in areas where civic space is restricted

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Executive summary

For financial sector organisations[1] , effective risk assessment of clients and investees is a critical tool that informs lending, banking, and investment decisions. It includes assessing risks to human rights and the environment connected with client and investee[2] business activities in their operations and value chains. We recognise that businesses have a responsibility to assess these risks under the UN Guiding Principles on Business and Human Rights. The responsibility to respect human rights is also increasingly reflected in legal frameworks.

"To be a responsible bank, we have to understand the risks we're exposed to, so we can take steps to address them. If we don't know what is going on, how can we act responsibly and mitigate risks to people and the environment effectively? The majority of people in the world live in places where their ability to speak out for their rights is restricted. Open and unrestricted civic space is critical for the financial sector to create long-term value in a sustainable and just way." – *Herma van der Laarse, Business and Human Rights Advisor, ABN AMRO*

A risk assessment is only as good as the information that supports it. As financial institutions and ESG data providers, we face a particular challenge with our risk assessments of clients and investees: the challenge of civic space restrictions. Civic space restrictions create an 'information black box,' leaving us with blind spots about potential or actual negative impacts on human rights connected to our business. When civic space is restricted – meaning people are unable to organise, participate and communicate freely in their societies[3] – we lack critical information about the human rights situation in those places, and we struggle to know if human rights have been harmed in connection with our clients and investees. These restrictions exist in every region of the world, which means they affect many of our clients and investees. In these circumstances, "no news is bad news" – we are not hearing about that which is precisely what we need to know about.

In 2022, we (four financial institutions and one ESG data provider) came together to try to unpack this challenge in consultation with experts, including civil society representatives and peer institutions. Our aim was to identify potential ways to strengthen our human rights risk assessment methodologies in relation to civic space restrictions. This publication shares insights from a series of sessions we held with project participants and external experts, including civil society representatives. **Our intention with this publication is to galvanise further collective efforts to effectively address the challenge of civic space restrictions, through sharing our learning with sector peers and the broader business and human rights community.**

While our discussion sessions did not reveal a perfect solution to this challenge, we did crystallise some key insights and early ideas about potential actions financial sector organisations could take to strengthen human rights risk assessments when civic space is restricted. These include:

1 In this publication, "financial institutions" refer to banks, pension funds, asset managers and other financial institutions that provide financial services. "Financial sector organisations" refer to ESG data providers.

2 Throughout this publication we refer to 'clients and investees.' Different types of financial sector organisations are represented in the project group, including banks, a pension fund, an asset manager, and an ESG data provider. 'Clients and investees' is used here as a shorthand to describe businesses that the project group participants have a connection with through corporate lending, project financing, asset management and investment, and ESG research and analysis.

3 Definition from CIVICUS

Observation or insight	Ideas
A. Engagement with affected and potentially affected people and human rights defenders is key to understanding risks and addressing them effectively, especially when civic space is restricted	
An important element of risk assessment is input from potentially affected people and/or their legitimate representatives. Human rights defenders also have a key role as a voice for affected people -- as watchdogs, and often providers of early warnings of human rights risks and adverse impacts connected to business. According to research from the Business & Human Rights Resource Centre, a common factor (one in three instances) that can lead to or drive attacks on human rights defenders is ineffective or non-existent stakeholder engagement, including failure to secure free, prior, and informed consent of Indigenous peoples. When civic space is restricted, effective and meaningful engagement with affected and potentially affected stakeholders, including human rights defenders, becomes even more essential to help identify and mitigate risks to people and the environment. However, this can be a resource-intensive process, and asking these people about human rights can carry risks to their safety. In addition, while some financial institutions do point out the importance of stakeholder engagement to clients and investees, this conversation can be sensitive and can require a high level of expertise that not all financial institutions readily have. Some financial institutions may have low existing levels of leverage with some clients and investees on this topic.	Some civil society organisations and financial sector organisations have already tested out approaches for risk assessment in certain high-risk contexts, using various channels to gain access to additional information directly from human rights defenders and affected people as a credible source of information. There is also existing high-quality guidance on this topic. Financial sector organisations, working with civil society, could analyse how these approaches have worked and determine how they could be applied to other high-risk contexts. This may involve consulting with security and human rights experts to ensure precautions are taken to mitigate risks to people sharing information about risks. Potential or actual negative impacts on human rights defenders should always be considered when carrying out a risk assessment. **Financial institutions can also clearly communicate to clients and investees that they expect them to undertake effective stakeholder engagement as part of their human rights due diligence**, which includes risk assessment. Financial institutions can **pool resources to develop a common set of 'smart' questions** (which each institution could adapt as necessary) that help uncover layers of insights from clients and investees about their stakeholder engagement processes and **use their collective leverage in cases of concern**. **If financial sector organisations feel they have identified a high-risk context that requires a deeper risk assessment, they could potentially pool their resources to enable this.**

Observation or insight	Ideas
B. Build a body of risk information that is more closely sourced from affected people and establishes the quality of the risk information	
Financial institutions traditionally rely on risk information from ESG data providers, large international organisations and think tanks (some supplement these traditional sources with news media and civil society reports). Some of these more traditional information sources may use information from sources several degrees removed from affected people. While these sources may focus on risk to the business (financial materiality), financial sector organisations sometimes use them for their risk assessments, which they are not designed for. It can be challenging for these organisations to access information in contexts where civic space is severely restricted. In addition, ESG data providers and some financial institutions have specific methodological needs for the type of sources they integrate into their risk assessments, of which most civil society organisations are unaware. Examples of this include having a formal status as a civil society organisation, and having timestamps for sources used.	Civil society organisations already provide relevant risk information that originates closely from human rights defenders and affected people. However, those methodologies and reports are not always in a format that works well with financial sector organisations' requirements and they may not be readily automated, which is useful for large-scale risk assessments. As many financial institutions have thousands of clients and investees, individual in-depth manual reviews are not very feasible. Of course, the risk assessment process is deepened as the level of risk increases, so in-depth reviews are not needed for all risks. **Financial sector organisations, in particular ESG data providers, could work with civil society organisations to understand each other's respective methodologies and methodological needs. They could then collaboratively find ways to integrate risk information from civil society organisations into their risk assessment processes.** It may also be useful to add to these processes information from civil society, such as from the CIVICUS Monitor, regarding the quality of information available for a specific geography. The existing CIVICUS Monitor provides red flags about restricted civic space on a country basis. This can provide a useful indication of the level of risk and the quality or completeness of risk information, even before specific risks are assessed.

Observation or insight	Ideas
C. Develop a space to foster specialised human rights knowledge within financial sector organisations	
An effective human rights risk assessment requires a high degree of expertise for the analysis of information. This means individuals working within financial sector organisations need to have both deep and broad expertise, which can be difficult to scale.	**Financial sector organisations could increase their knowledge of human rights in various contexts by developing a working group** that brings together financial institutions, ESG data providers, academics and civil society organisations to regularly discuss human rights concerns in various geographies with civic space restrictions. This can keep financial sector organisations up-to-date with the latest insights from civil society, thereby helping them identify which geographies might be high risk and require a deeper dive as described in row A. Financial sector organisations could also share in these discussions any red flags that have arisen in their portfolios related to civic space restrictions, and ask civil society organisations to share further insights or make useful connections to experts. The working group could be part of or build on the efforts of existing relevant platforms, such as the Business Network on Civic Freedoms and Human Rights Defenders.

As project participants, we intend to continue reflecting within our organisations about how to put these findings into practice, both as individual financial sector organisations and in conversation with our industry peers. By sharing our observations and ideas, we hope to advance the conversation across the financial sector about the critical importance of open and unrestricted civic space for our organisations to work effectively, fulfil our responsibility to respect human rights, and contribute to the realisation of more sustainable and just societies.

ABN·AMRO apg ING ROBECO The Investment Engineers MORNINGSTAR SUSTAINALYTICS

Background to this publication

What is civic space and why is it of increasing importance for businesses?

Open civic space means that people are able to organise, participate and communicate freely, in order to claim their rights and influence the political, economic and social structures around them.[4] Civic space enables all of us to contribute to the policymaking that affects our lives by accessing information, engaging in dialogue, expressing disagreement, and joining together to express our views.[5] The exercise of civic space can entail journalists reporting on government corruption, workers organising to collectively push for safer working conditions, young people campaigning for government action to address the climate crisis, and community members publicly demonstrating to protect their water sources (to name just a few examples).

The 2016 report from the United Nations Office of the High Commissioner for Human Rights, "Practical recommendations for the creation and maintenance of a safe and enabling environment for civil society, based on good practices and lessons learned," sets out the following: *"According space to civil society is not optional. International human rights law places an obligation on States to respect rights and freedoms that are indispensable for civil society to develop and operate, including the freedoms of opinion and expression, peaceful assembly and association and the right to participate in public affairs. International law also protects the lives, liberty, physical integrity and privacy of civil society actors from arbitrary State interference."*

Respect for the rule of law and freedom of expression, association and assembly is also essential to ensure stable, profitable and sustainable environments in which businesses thrive and economies prosper. In many countries around the world, however, civic space is restricted. This creates an information problem and heightens risks for business: business actors may struggle to know if human rights are being protected and respected in the places where they operate or invest, because the ability of civil society to uncover and disseminate that information is restricted. As shown in research from the Business & Human Rights Resource Centre, some business actors are driving civic space closure and attacks on defenders, alone or in collusion with governments.

In an increasing number of countries around the world, civic space is restricted. In what CIVICUS has referred to as a 'downward spiral,' only 3.2 per cent of the world's population lives in countries rated as open.[6]

4 Definition from CIVICUS
5 See webpage on civic space from the UN Office of the High Commissioner for Human Rights
6 See CIVICUS Monitor: People Power Under Attack

Some key drivers for businesses, including financial sector organisations, to take steps that address civic space restrictions, include:

- **Alignment and compliance with global standards and legal frameworks:** Global standards and, increasingly, legal frameworks, require businesses to conduct human rights and environmental due diligence (HREDD)[7], meaning they have a responsibility to address ways in which they may be connected to civic space restrictions or attacks on defenders, such as financing a company that brings SLAPPs (strategic lawsuits against public participation). More broadly, civic space restrictions make it more difficult for businesses to conduct several aspects of HREDD, including accurate assessment of risks to human rights, understanding the perspectives of affected and potentially affected people, and integrating risk information and stakeholder perspectives into ongoing risk management activities, including preventing and addressing risks as well as enabling access to remedy where negative impacts on human rights have occurred. Businesses that fail to carry out HREDD may not meet requirements under these norms, standards and legal frameworks.
- **Lowering likelihood of human rights abuses:** Without reliable and credible information about human rights risks and impacts, businesses, including financial institutions, cannot take steps to prevent and address those risks and impacts. This increases the likelihood of negative impacts on human rights.
- **Fostering long-term value creation:** Civic space restrictions tend to signal a generally risky human rights context. Contexts with poor human rights records tend to be riskier for investment and economic activity, while contexts where fundamental freedoms and rule of law are respected tend to further the innovation and productivity that is critical to build long-term value for business.[8]
- **Reducing risk to the business:** Civic space restrictions can mask harms to people associated with business activities, which when left unaddressed can lead to open conflict and violence. Conflict and violence are not only harmful for human rights – they can cause production delays, disruptions and even cessations in business activity, sometimes at a great cost to businesses financially, reputationally and legally.
- **Advancing efforts to address climate change:** Civic space restrictions and related violence may also lead to investors overlooking a critical factor in assessing climate risks: risks to Indigenous and tribal peoples' rights. Research shows that biodiversity preservation and climate stability are best ensured when Indigenous and tribal people's rights, especially land rights, are respected. However, land and environmental defenders are the most at risk of all groups of defenders, and among them Indigenous defenders are disproportionately threatened, attacked, and even killed when they protect their lands and way of life.[9]

Several of the items in this list as well as additional insights on the business case to support civic space can be found in the 2018 publication "Shared Space Under Pressure: Business Support for Civic Freedoms and Human Rights Defenders." This publication provided much inspiration to the project group and many of its ideas were reflected and iterated during the discussions encapsulated in this document.

7 For example, the UN Guiding Principles on Business and Human Rights (UNGPs), the OECD Guidelines for Multinational Enterprises, the IFC Performance Standards, the forthcoming EU Corporate Responsibility Due Diligence Directive. The UN Office of the Higher Commissioner for Human Rights has issued guidance on civic space and human rights defenders aspects of the UNGPs.
8 Read more: The Business Case for Human Rights, the B Team, 2018.
9 Read more about the business case for Indigenous rights.

The opportunity to be gained for businesses by engaging on civic space issues can be significant. By engaging constructively and proactively with human rights defenders, including representatives of local human rights organisations, trade unionists, journalists, Indigenous communities, and others acting to promote and protect human rights, businesses can gain valuable insights into risk and impacts on human rights, enabling them to better manage those risks. This not only helps businesses act more responsibly, but also enables them to build on opportunities to create long-term value.

In an attempt to respond to the challenges created by civic space restrictions, a group of Netherlands-based financial sector organisations (ABN AMRO, APG, ING, Robeco, Morningstar Sustainalytics) came together to explore how to better understand this challenge

"The protection of human rights defenders and civic freedoms – freedom of expression, association and assembly – is central to our future of shared prosperity, climate security and responsible governance on which markets depend. Our urgent transition to zero-carbon economies relies on open civic space for people to organise and build public support, as do millions of workers seeking a living wage and respect for their rights in global supply chains. Yet restrictions on civic space are pervasive across the globe, which also heighten risks for companies and investors, which have a responsibility to respect human rights. Growing pressures from new human rights and environmental due diligence legislation, combined with public demand for robust ESG action by investors, provide responsible financial institutions and other investors with substantial incentives to use their leverage to insist businesses and governments act boldly to protect civic freedoms and open space on which our shared values depend."
– Phil Bloomer, Executive Director, Business & Human Rights Resource Centre

The UN Working Group on Business and Human Rights has stated that human rights defenders "should be part of a business enterprise's stakeholder engagement, and due diligence processes, instead of being seen as annoyances, troublemakers, obstacles or threats".

and ways to tackle it. The Business & Human Rights Resource Centre also joined these discussions as a civil society participant, sharing information and analysis about restrictions on civic freedoms and attacks on human rights defenders, and recommendations of civil society experts to consult. Over four months in 2022, the group met for a regular (virtual) two-hour discussion session, facilitated by an external business and human rights advisor. During the sessions (detailed programme on page 23-24), the group heard from external experts, including civil society representatives and peer institutions, regarding current approaches and brainstormed ideas about how to 'break through the information black box'. Fundamentally, the group sought to better understand how existing human rights risk assessment methodologies and due diligence practices can be strengthened or complemented to address the information gap and heightened risks resulting from restrictions on civic space. The group also considered what actions businesses – including financial institutions – might take to mitigate the range of human rights risks that can arise when doing business in contexts where civic space is restricted.

This publication is designed to share findings from these discussions. Given the complexity of civic space restrictions, finding comprehensive solutions is an ongoing effort that requires collaboration across a wide range of actors. Nonetheless, even within our small project group, we found that our sessions yielded learnings that may be useful for other practitioners, particularly readers working with financial sector organisations. Our intention with this publication is not to set out a new definition of leading practice in this area, or to announce new approaches or commitments that the group of participants will embark on as a result of the sessions. Instead, it is to share our learnings with peers in the financial sector and broader business and human rights community to further collective efforts to effectively address the challenge of civic space restrictions. Each project participant intends to make use of the findings of this project to support further internal work on this topic, as well as to support dialogue with industry peers and key stakeholders.

A note on language:
Throughout this publication, we use some terms for the sake of brevity to describe project participants as well as the business relationships and connections they have. These include:

- Financial sector organisations and financial institutions: In this publication, 'financial institutions' refers to banks, pension funds, asset managers and other financial institutions that provide financial services. 'Financial sector organisations' includes both financial institutions and ESG data providers.
- Clients and investees: Different types of financial sector organisations are represented in the project group, including banks, a pension fund, an asset manager, and an ESG data provider. 'Clients and investees' is used here as a shorthand to describe the businesses that the project group participants have a connection to through corporate lending, project financing, asset management and investment, and ESG research and analysis.

Contributors to this publication

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This project was conceived by ABN AMRO, which also provided project coordination and supported the editing and layout of this publication. The project's design, the moderation of the discussion sessions, as well as the authoring of this publication, was carried out by Julie Schindall at Levin Sources.

LEVIN SOURCES

Credits

This work is the product of a collaboration between ABN AMRO, APG, ING, Robeco, and Morningstar Sustainalytics, with advice from the Business & Human Rights Resource Centre and facilitated by Levin Sources.

Resources to learn more about civic space and the business responsibility to respect human rights

This publication is not designed to educate readers about the fundamentals of civic space and how that relates to the business responsibility to respect human rights as set out in global standards including the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. We can recommend existing resources for readers who want to learn more about the issue, including:

- "The UN Guiding Principles on Business and Human Rights: Guidance on Ensuring Respect for Human Rights Defenders," UN Working Group on Business and Human Rights, 2021
- "Shared Space Under Pressure: Business Support for Civic Freedoms and Human Rights Defenders," commissioned by Business & Human Rights Resource Centre and the International Service for Human Rights, authored by Bennett Freeman with Sif Thorgeirsson, Adele Barzelay and Brooks Reed, 2018
- CIVICUS Monitor: People Power Under Attack, 2022
- "Human Rights Defenders and Business in 2021: Protecting the Rights of People Driving a Just Transition," Business & Human Rights Resource Centre, 2022
- "Renewable energy and civic space: civil society's role in a just transition," International Center for Not-for-Profit Law, June 2022.
- "Safeguarding Human Rights Defenders: Practical Guidance for Investors," Investor Alliance for Human Rights, International Service for Human Rights, and Business & Human Rights Resource Centre, 2020
- "Responsible Sourcing: The Business Case for Protecting Land and Environmental Defenders and Indigenous Communities' Rights to Land and Resources," Global Witness, 2020
- "SLAPPed but not Silenced: Defending Human Rights in the Face of Legal Risks," Business & Human Rights Resource Centre, 2021
- "The role of the private sector in protecting civic space," Harriet Moynihan, Thiago Alves Pinto and Bennett Freeman, Chatham House, 2021
- "The Business Case for Indigenous Rights," Moira Birss and Kate Finn, Stanford Social Innovation Review, 2022
- "2022 ITUC Global Rights Index," International Trade Union Confederation, 2022
- "Unpicked: Fashion & Freedom of Association," Business & Human Rights Resource Centre, 2022

Findings from sessions

How should we understand the concept of civic space restrictions? What signals could we look for that civic space is restricted?

Our initial sessions aimed to delve deeper into what defines 'civic space restrictions'. By having a better understanding of what constitutes a civic space restriction, the project participants hoped to gain insights into how financial sector organisations could better identify these restrictions in geographies they are connected to through their clients and investees. By being aware of civic space restrictions in a given context, financial sector organisations could strengthen their risk assessment practices and reduce the risk of being connected with human rights harms. Key takeaways from these early sessions include:

Definition and prevalence of civic space restrictions

1. The **purpose of civic space** is that citizens and civil society organisations are able to organise, participate and communicate without hindrance, and in doing so, they are able to claim their rights and influence the political and social structures around them[10]
2. The **exercise of civic space hinges on the realisation of core enabling rights:** freedom of peaceful assembly, freedom of opinion and expression, freedom of association. Many other rights are important for the exercise of civic space, but these core rights are critical for the enabling of civic space
3. Civic space restrictions exist on a spectrum of severity, but overall **these restrictions are very prevalent across the globe**. According to CIVICUS, in 2021, 9 out of 10 people were living in countries where civic freedoms are severely restricted.

Signals that civic space is restricted

1. **Restrictions on the enabling rights for civic space** (see previous paragraph, item no. 2 for a list of key enabling rights)
2. **Enactment, stricter enforcement, or misuse of certain types of laws:** There are categories of laws that tend to be 'culprits' or 'drivers' in civic space restrictions. The enactment, stricter enforcement or misuse of these types of laws can be seen as red flags denoting that civic space restrictions are occurring. For example, in recent years, the Covid-19 pandemic was exploited by some states to enact, more strictly enforce, or misuse laws that hinder civic space. Types of laws that, when misused, may become drivers for civic space restrictions include:
   a. 'Lifecycle restrictions': restrictions that repress the establishment of associations like civil society organisations or trade unions, such as denying or slowing registration, hindering access or use of funding (such as foreign funding restrictions through designation as foreign agents), criminalising activities of unregistered associations and dissolving associations
   b. Restrictions on freedom of expression, such as 'fake news' laws and internet shutdowns
   c. Cybercrime laws, such as making certain types of speech illegal on digital channels
   d. Restrictions on peaceful assembly
   e. Counterterrorism, national security, anti-money laundering laws against civil society organisations and human rights defenders.

10 See more here

Approaches to sense red flags that civic space is being restricted

In addition to watching for the presence of the signals listed above, businesses can:

1. **Widen the lens to go beyond laws and policies.** Ask some basic questions about the context, such as:
   a. What is the level of political discourse in the context? Are certain groups absent from this discourse? How honest is this discourse?
   b. How accountable are law enforcement agencies?
   c. Is the criminal justice system fair to dissidents, civil society, whistle blowers?
2. **Determine if businesses are part of the problem** by analysing if they have or are causing, contributing to, or directly linked to civic space restrictions and/or attacks on human rights defenders, including across their value chains and business relationships. Examples include (and are not limited to) [11]:
   a. Hiring or financing a security company or law enforcement agents that use physical violence against people peacefully protesting a business operation, or providing training for police officers designed to influence their response to protests
   b. Carrying out covert intelligence-gathering operations on activists
   c. Sharing private user data with government agents with an aim to restrict civic space
   d. Taking actions that divide communities affected by the company's operations, such as by providing incentives or benefits for some members and not others
   e. Discriminating against, firing, arresting, threatening, or engaging in violence against union leaders; restricting the right to unionise in a workplace; forming company-controlled unions, and/or sourcing from companies that restrict freedom of association
   f. Initiating a strategic lawsuit against public participation against someone raising concerns about human rights harms or risks related to a company
   g. Cooperating with state repression, such as by providing services or products that enable surveillance of journalists and other human rights defenders
   h. Engaging in financial derisking (inappropriately denying financial services, such as bank accounts, to civil society organisations due to incorrectly applied compliance procedures on money laundering and terrorism financing, thereby hindering their ability to operate)
   i. Lobbying for policies that restrict civic freedoms, such as 'anti-protest' laws, and actions that lead to criminalisation of defenders. This could include calling the police during peaceful demonstrations in front of company premises, accusing human rights defenders of trespassing or other forms of 'criminal' conduct, lobbying for legal reforms that prohibit some types of protest which could facilitate the rule of law being used against communities and defenders.
3. **Seeing through the 'false flag':** a challenge in some contexts is identifying when a government or other actors have set up a false civil society group or non-independent unions. This means that groups or individuals appear to speak for civil society or workers, but do not. This type of activity is often connected to disinformation campaigns propagated by governments in power and/or their supporters. This situation may make it difficult for business to identify civil society groups to turn to when seeking to understand human rights risks and the state of civic space.

11 More examples can be found here

The vital importance of safe and effective stakeholder engagement

Effective and meaningful engagement with rightsholders and civil society, including human rights defenders (HRDs), that is gender-sensitive and intersectional, is critical to a due diligence process that effectively identifies actual or potential human rights impacts and responds to the concerns of affected people. For stakeholder engagement to be meaningful, it must inform all stages of due diligence, starting with risk identification and analysis. It must also be safe, so that defenders, their communities, and other rightsholders speaking out about risks and impacts can do so without suffering or fearing retaliation.

As research from the Business & Human Rights Resource Centre shows, since 2015, there have been nearly 4,500 attacks on human rights and environmental defenders worldwide. In 2020, at least one in three attacks against defenders stemmed from a lack of meaningful participation, access to information, consultation, or the failure to secure free, prior, and informed consent of Indigenous communities. Many investors and companies already recognise that defenders are important partners in identifying potential or actual adverse impacts in their investments, operations and global value chains, in improving corporate due diligence, and in the provision of remedy when harm occurs. By recognising the value of early and constructive engagement with rightsholders and HRDs, businesses including financial institutions can also avoid significant problems and costs down the line.

Risk assessment: How are we currently assessing risks? What could we do better to cope with the challenge presented by civic space restrictions?

Across a range of sessions, we sought to answer the questions below, which focus on risk assessment.

- How do we as financial sector institutions currently assess human rights risks of clients and investees?
- Do we have special approaches to risk assessment when clients and investees are doing business in places with restricted civic space?
- Do we think our current approaches to become aware of human rights risks in places where civic space is restricted are working?
- If they're not working, do we have ideas about how we could do better?

Key takeaways from these sessions include:

1. Financial institutions could consider the degree to which risk information sources, such as reports, ratings and rankings, take into account civic space restrictions, and what human rights impacts are – or are not – reflected in these sources. Many financial institutions currently use a handful of internationally-recognised ratings and rankings from large think tanks or international organisations to act as proxies for human rights risks in various geographies. Several project participants noted they regularly see discrepancies between information in risk information sources they have traditionally used, and risk information available from civil society organisation like the Business & Human Rights Resource Centre. As one project participant noted, "sometimes, no news is bad news." **It may be useful for financial sector organisations to consider complementing their typical set of risk sources with resources whose methodologies derive risk information more directly from affected people.** This may help avoid gaps in risk information by getting closer to primary source information.

"We need to understand that while we want to strengthen the quality of our risk assessments, we should know that human rights risk assessment depends on people. The risk assessment depends on how the people involved in the assessment analyse the risk information they have – and the degree to which they take into account where information may be lacking. There is no such thing as a perfectly objective, wholly quantitative risk assessment on human rights." – *session participant*

Some of these resources are being produced by civil society organisations, such as CIVICUS and its CIVICUS Monitor. At the same time, if financial sector organisations are to use risk information from civil society organisations, it will be important for these two groups to have an exchange regarding their methodologies and needs for risk assessments. What methodological approaches and evidence would financial sector organisations need to be able to better integrate risk information produced by civil society organisations in their risk assessments, at scale? To answer this question, it will be important for financial sector organisations to be transparent about their risk assessment methodologies, and be open to innovation to ensure that methodologies surface reliable and accurate risk information, which can be methodologically complex on human rights issues. These exchanges may also help financial sector organisations understand what information is a reliable proxy for human rights risks, and what is less reliable.

2. **In high-risk circumstances, a tailored approach to information gathering and information verification has been seen to be more effective.** During the sessions, some financial sector organisations shared learning from their attempts to implement a very tailored approach to risk assessment in contexts they realised were high risk for severe human rights impacts, based on reports from media and civil society. In these cases, the organisations dedicated staff to diving deep into risk information from those contexts, including ensuring they had access to specialised risk assessors who spoke local languages and could access commonly used information channels in those contexts. One organisation also sought to build relationships with local human rights defenders as more reliable sources of information, which was very useful but proved challenging due to extra measures taken to protect the safety of those individuals. Another organisation did a deep-dive into reports from several civil society and media organisations, trying to verify risk information on a sub-set of clients and investees through desktop research by drawing on risk information sourced closer to affected people. While the organisations that tried out these approaches viewed them as more effective in terms of 'breaking the information black box,' these efforts were resource intensive and may only be able to be implemented for contexts seen as the highest risk to human rights, or where more resources for due diligence are available, such as sometimes the case in project financing.

"We prefer information that is not fully perfect but that is actually new, compared to a 100-plus page, nicely-designed report that repeats 'known' information." – *session participant*

3. **ESG data providers play a key role in strengthening risk assessments:** Financial institutions tend to rely heavily on third-party ESG data providers. See more in the box in this section about how ESG data providers provide data about human rights risks. If financial institutions and civil society organisations can work with ESG data providers to 'break the black box' on human rights risk information in contexts where civic space is restricted, many actors will benefit.

4. **Consider if the risk lens used by financial institutions is creating gaps in knowledge:**
   a. A generic country risk assessment may not reflect particular risks arising from the nature of the business activity, the presence of vulnerable people, risks associated with specific regions within a country, and other key risk factors for human rights[12]. For instance, the United States is generally perceived as having lower risks around some human rights issues. However, during Indigenous-led opposition to the Dakota Access Pipeline, human rights defenders experienced attacks. In some circumstances, it may be important to dive deeper and assess risks against a range of risk factors, particularly where risk information is very limited due to civic space restrictions
   b. A risk assessment that only looks at country risk based on the headquarters location of the client or investee (or a business in their value chain) can overlook risks arising from the location where business activities are taking place. Furthermore, an inability to identify where business activities are taking place may itself be a signal of heightened risks, as poor transparency of weak traceability in the value chain can mean risks are poorly understood and managed. It may also be useful to look at risk information about businesses globally. If the risk assessment catches concerns in one geography, the assessor may want to dig deeper to look at risks connected with the same business in other locations
   c. The perspective that most current ESG risk assessments apply considers how the operating context might impact the business (this is sometimes referred to a 'financial materiality' lens). This is different from the 'risk to people' lens (sometimes called 'impact materiality') set out in the UNGPs and forthcoming legal frameworks. Taking the financial materiality lens can have a perverse effect: restrictions on civic space could reflect positively on a company's ESG score. How? For example, if workers are not allowed to associate (such as through trade unions), the risk of social unrest may be deemed lower (no workers' organisations may mean there are no public protests by workers). Or, if there is no free press, investors may be less likely to find out about certain impacts, which could lead to a lower risk rating. A different perspective that may yield more accurate risk assessments might ask: how could the business' activities affect the operating context? This would be the 'financial materiality' lens that focuses on risk to people. Overall, financial sector organisations may need to rethink how the current risk lens used by many ESG assessments weighs these understandings of how ESG risks affect business activities, and how business activities affect ESG risks
5. **Ideas for approaches to human rights risk assessments that may account better for civic space restrictions:**
   a. Overall, a more effective approach for human rights risk assessments may blend 'top down' and 'bottom up' approaches to assessing risks. Ratings and rankings that have been traditionally used may be very scalable, but they are not always granular enough and can have blind spots. Financial sector organisations could complement this 'top down' view with their own analysis that is more granular and less scalable – diving in deeper where they have signals (see previous section on signals that civic space is restricted) that civic space is severely restricted and that human rights abuses are occurring[13]. This is the 'bottom up' approach

12 For an explanation of these key risk factors, see Shift, "Conducting Human Rights Due Diligence in High-Risk Circumstances," and in particular the graphic on p.6 which illustrates sources of risk (nature of the operating context, nature of the business relationship, nature of the business activity, presence of vulnerable people).

13 Civic space restrictions are not the only reason for a business to undertake heightened human rights due diligence. One example where heightened human rights due diligence is necessary is in conflict situations (civic space also tends to be restricted in conflict situations). See more on heightened due diligence in conflict situations in the guide "Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts,".

b. To help with the 'bottom up' approach, financial sector organisations could consider pooling resources and setting up standard approaches to enhanced risk assessment in high-risk circumstances, based on the models piloted by some of the peer organisations as referenced above. Or they could choose to support these efforts by ESG data providers, such as by paying additional fees to resource enhanced risk assessment for high-risk circumstances. These standard approaches could be informed by input from civil society organisations and academics and build strength over time, such as by creating networks with civil society organisations that can help provide or verify information about risks in contexts with restricted civic space

> *"Local human rights defenders are sitting on a huge amount of knowledge. Sometimes accessing that knowledge is fairly straightforward – just pick up the phone. At other times, maybe it's dangerous to pick up the phone and connect directly with local defenders. But they may have support networks outside that country who can speak more freely to you and are also just a phone call away. The key is to establish those relationships. You need a networked approach."*
> *– Danielle Essink, Senior Engagement Specialist, Robeco*

c. Financial sector organisations could consider adjusting which sources they use for human rights risk assessment, potentially using more sources whose information is derived more directly from affected people, such as reports from civil society organisations with local networks, information from embassies in particular countries, and local, regional, and international media reporting from places where civic space is restricted. They could also consider adding sources that include analysis of financial flows and corruption on both the national and local levels, as these factors influence the human rights situation in a given context. Some financial sector organisations have this information already due to anti-money laundering and anti-terrorism requirements

d. When structuring the risk assessment, financial institutions could use a 'funnel approach' with core questions that help paint the picture of risk. These questions could start by addressing the broad legal frameworks and state accountability level, move to the industry or sector level, and then look at the client or investee level. Some of the financial sector organisations in the project group already use some of these questions in their risk assessments. The questions could include:

   i. Legal frameworks and state accountability level: What is the legal structure in this country? Is it supportive or problematic for human rights and civic space? What is the degree of impunity the state has in the operating context? A careful review of legal frameworks and court findings can provide a baseline understanding of this. Also see the previous section on how legal and policy instruments give signals that civic space is being restricted

   ii. Industry/sector level: What is the track record of this industry on human rights in this operating context? If we do not know the track record of this industry in this particular context, do we know the track record of the industry in a similar context?

   iii. Client/investee level: What are the risk management controls the client or investee has in place to appropriately manage human rights risks in the operating context? Is there evidence they are working in practice? What is the track record of this business with respect to human rights defenders? Have they been allegedly involved with attacks on human rights defenders in other operating contexts?

e. Even if financial sector organisations struggle to identify more accurate risk information due to civic space restrictions, they could nonetheless flag in risk assessments the completeness or reliability of information – a kind of explicit disclaimer that sets out what is unknown. This would serve to inform users about the strength of the information, which should influence how users make decisions based on that information.

How do ESG data providers provide risk information related to human rights

Remco Slim, ESG Product Manager at Morningstar Sustainalytics, shares an example of how ESG data providers provide risk information related to human rights.

"ESG data providers effectively act as a 'clearing house' when it comes to identifying, filtering, and assessing human rights risks. A human rights risk assessment by an ESG data provider is often triggered if reports on issues or allegations appear in the public domain. However, to prioritise the risks assessments for financial institutions that require analysis which prioritises actual risks over potential risks, the research process imposes various filters and thresholds in the risk assessment.

For example, when a report appears alleging that a vulnerable group is being subject to forced labour, an analyst will review the report to identify if this can be linked to a specific sector, location, or companies. If a specific link can be established between reports of forced labour and specific companies, the analyst will take a deeper dive and conduct additional research. The analyst will search in internal and external databases with (local language) sources and review the underlying sources of the reports describing the impact. Interviews with workers or even anonymous (but specific) witness accounts are often an important element for assessing whether the allegations are concrete and recent. Analysts will also review companies' public disclosure (which will have varying degrees of completeness). A challenge can arise when reports describe a group of people being subject to forced labour, but we are unable to determine with certainty that those people are working at a specific company or site involuntarily. Financial institutions, which are the clients of ESG data providers, expect a consistent and comparable global baseline of sustainability-related risk information that sets out a clear link between the investor, the investee, and the ESG risks or impacts. It is not always possible for ESG data providers to find evidence that clearly sets out these links."

Setting expectations of clients and investees

During several sessions we considered how financial institutions set expectations of clients and investees doing business in places with civic space restrictions. This was important to consider given that financial institutions' clients and investees have their own responsibilities to manage risks to human rights, including where this intersects with civic space restrictions. Key takeaways from speakers during these sessions include:

1. The participating financial institutions noted they consider human rights risks and seek out information sources to understand the circumstances where these risks arise. Several of them reference the importance of respect for the rights of human rights and environmental defenders in policies. Participants noted that **civic space restrictions often signal a generally higher-risk context for human rights**, and high-risk contexts already are frequently subject to heightened due diligence by financial institutions and their clients and investees
2. **The central expectation of clients and investees should still be good human rights due diligence.** This will logically have a significant impact on how clients and investees assess and manage human rights risks and take effective steps to avoid causing, contributing to, or being directly linked to the occurrence of civic space restrictions. In particular, it may be useful for financial institutions to emphasise to clients and investees the importance of:
    a. finding entry points for the conversation on civic space through various angles, namely those that are part of the human rights due diligence process. For example, human rights impact assessments are useful to identify how civic space restrictions are intersecting with the business' human rights risks and impacts
    b. responding to incidents (e.g., crackdowns on protestors or dissidents): tone from the top is critical. If a business sees a government violently suppressing protests by workers in its own industry, it should demonstrate a top-level response that makes clear to the government that this makes the business less inclined to do business in that country. This approach has been taken by several companies, such as in the apparel sector. Financial institutions can also exercise significant leverage in these cases, urging clients and investees to take actions like those described here
    c. for technology, media and telecom companies: being transparent with users regarding data privacy and freedom of opinion and expression. This includes publishing regular reports on state requests or demands, such as internet shutdowns or access to individuals' mobile phone data, including the government agency responsible and the duration of the shutdown

"As financial institutions, we offer different products and services. This means that the way we are connected to different clients - and different business activities - can vary. Depending on the level of due diligence we conduct, we also engage with our clients, and in many cases we can discuss human rights risks in a straightforward manner with a client or investee. We are frequently several degrees removed from where serious risks to human rights could be occurring, and we may have limited access to information. Occasionally, this results in limitations for us to conduct a complete assessment of those risks, and limits our ability to engage with local communities. Sometimes, not all parties are open to a conversation about human rights. These are all challenges - but still, we have seen examples where we were able to tackle these challenges, in particular through collaboration with others, relationship building, and a focus on dialogue and engagement." – *Tessa Maksimovic, Senior Advisor Environmental and Social Risk Management, ING*

3. Specifically within the human rights due diligence process, **good stakeholder engagement is paramount to manage risks created by civic space restrictions**.[14] Even in contexts where civic space is restricted, businesses can invite potentially affected people, civil society and trade unions into decision-making fora. It is important to integrate their voices prior to the start of projects and activities, such as before a new road is built or prior to establishing a mine. Businesses need to understand that this approach requires them to spend time building stakeholder voices into their activities; trust cannot be built quickly. This does not always match particularly well with typical timelines of projects or project financing, and in this instance, financial institutions should ensure that their financing approach is not forcing a quick timeline that leaves no time for stakeholder engagement. Meaningful stakeholder engagement can be resource intensive, but resources can be pooled through collaborations and joint initiatives to enable this to occur, as has already occurred in some sectors. Stakeholder engagement can also be facilitated through collaboration with third parties such as external experts, who may already have well-established relationships with potentially affected people and their legitimate representatives
4. While acknowledging that financial institutions may struggle to use leverage with clients and investees to talk about civic space restrictions and the importance of stakeholder engagement, simply **putting the question to clients and investees about how they go about understanding the perspective of affected people can trigger thinking and action**. Asking clients and investees these questions is another instance where financial institutions can pool resources and develop a common set of 'smart' questions (which each institution could adapt as necessary) that help uncover layers of insights

14 See, for example, "Hearing the Human," Business & Human Rights Resource Centre, Front Line Defenders, Indigenous Peoples Rights International (IPRI) and ProDESC, 2021.

5. When engaging with clients and investees on expectations for managing human rights risks, including in contexts where civic space is restricted, it may be useful for financial institutions to consider raising some cautionary tales. For example, in some countries, some governments' strategies rested on the belief that they could facilitate an 'opening up' and improvement in the human rights context of the country through increased investment and business activity. This has proven not to be the case in several high-profile examples. The long-term consequences of failing to use leverage in some country contexts may galvanise some businesses – both companies and financial institutions – to be more proactive and exercise their leverage more robustly
6. Two potential pillars of action[15] for financial institutions and companies to a) cope with the information black box created by civic space restrictions, and b) attempt to combat civic space restrictions in countries they are connected to through their business activities include:
   a. **Merge the political risk analysis that many businesses already do with the human rights risk assessment that some businesses do.** The risk picture is all interconnected in reality. As part of this, ensure that the perspectives of potentially affected people are better represented in the risk assessment (see previous sections which also touch on these two points)
   b. **Engage in dialogue with governments about the importance of the rule of law, civic space and human rights, all of which are critical for creating an environment that enables long-term sustainable investment, prosperity and stability**.[16] Put another way: be prepared to have a voice with policymakers that points out that rule of law, civic space and human rights are not just 'nice to have' – they are critical for business to operate effectively and contribute to society. Both companies and financial institutions can conduct this type of engagement (for examples, see footnote 16), and financial institutions can incentivise their clients and investees to undertake government engagement of this type.

15 To read more on this topic, see: Geopolitical corporate responsibility can drive change, Bennett Freeman, Chatham House, 2022.
16 See more on how businesses can include civic space concerns in conversations with government in "Shared Space Under Pressure: Business Support for Civic Freedoms and Human Rights Defenders," page 47.

Concluding reflections

When we, the project participants, embarked on our series of discussions, we did not know what insights or ideas would surface through the course of our conversations. Civic space restrictions are a significant and increasing challenge in the majority of countries around the world[17], and they create a domino effect on a range of other rights that people are entitled to. Civic space restrictions are frequently a red flag, signalling that other human rights are at risk. We went into this project knowing we were unlikely to find an easy solution to a problem that continues to inhibit the freedoms of billions of people around the world.

Yet all of our organisations have a shared commitment to the vision set out in the UN Guiding Principles on Business and Human Rights: that businesses, including financial sector organisations, have a responsibility to respect human rights. For the toughest challenges we face to advance human rights around the world, we must collaborate to find approaches that yield real improvements for affected people. Tackling systemic, multi-actor, widespread issues like civic space restrictions and attacks on human rights and environmental defenders requires dialogue, collaboration, and commitments. Our intention with this project has been to engage in this dialogue to understand the challenges we are facing and try to develop ideas to tackle them.

We believe that the observations and ideas presented in the table in the executive summary of this publication can contribute to positive developments regarding the contribution of the financial sector to the fulfilment of human rights. We hope that by sharing them here and through ongoing engagement and conversation, we can build momentum in the financial sector around this critical topic.

We welcome your engagement on this topic and would be pleased to hear from you at humanrights@nl.abnamro.com.

17 See CIVICUS Monitor: People Power Under Attack

Annex

Key questions of the discussion sessions

Between March and June 2022, the project group held eight virtual discussion sessions, each two hours long. The overarching questions guiding the discussions were:

1. **How do we know if civic space is at risk?** What are strengths and weaknesses in current assessments, and what would good assessments look like?
2. **What should financial institutions expect of companies[18] doing business[19] in places with civic space restrictions?** What should a company's due diligence look like when it is doing business in a place with civic space restrictions? What could expectations of financial institutions be?
3. **What due diligence should financial institutions conduct on companies doing business in places with civic space restrictions?** What would better practice look like?

The specific questions for the individual discussion sessions were:

Session 1: How do we currently assess civic space restrictions? Group presentations and internal group discussion

a. What are our own methodologies and approaches?
b. What are their strengths and weaknesses?

Session 2: How should we understand 'civic space restrictions'? Discussion with external experts

a. What constitutes civic space restrictions? What types or categories of civic space restrictions exist, and how widespread are these types/categories?
b. How can these restrictions be pertinent to a business' activities? (whether relevant for contextual risk only, and/or relevant because the company is causing, contributing to, or is directly linked to the restrictions[20])
c. There are many ways that civic space can be restricted. Are there particular forms of restrictions that tend to indicate more severe risks ('big red flags')?

Expert speakers: Nikhil Dutta, Legal Advisor on Global Programs, International Center for Not-for-Profit Law; Mandeep Tiwana, Chief Programmes Officer, CIVICUS

Session 3: What would good assessments of civic space restrictions look like? Discussion with external experts

a. What are the strengths and weaknesses of current assessment approaches?
b. How can current assessments be improved, or complemented? What would 'good' look like?

Expert speakers: Marianna Belalba Barreto, Civic Space Cluster Lead, CIVICUS; K. Chad Clay, Co-Founder and Methodology Research and Design Lead, Human Rights Measurement Initiative; Claire McEvoy, Policy Analyst, lead of OECD Observatory of Civic Space, Organisation for Economic Co-operation and Development (OECD)

Session 4: What would we like to see happen to ensure we have better assessments of civic space available to us for our due diligence? Internal group discussion

a. What could we do ourselves?
b. What support would we need from others?
c. What's feasible in the short(er) and long(er) term regarding creating improved civic space assessments?

18 The financial institutions in the group represent banks, pension funds and financial information service providers. The term for their connection to other companies through their services varies (e.g., 'client'). For simplicity, this document refers to all of these business relationship entities broadly as 'companies'.
19 Meaning their own operations or business relationships, throughout their value chain.
20 The consultative sessions do not deeply explore distinctions between companies that "only" do business in contexts with restricted civic space, and companies that cause, contribute to, or are directly linked to civic space restrictions. Indeed, the UN Guiding Principles and leading practice in their implementation have made fairly clear what companies should do if they are causing, contributing to, or are directly linked to human rights impacts, including restrictions on civic space. Instead, the question the project group is primarily trying to address is: how can financial institutions know if companies have significant human rights risks, when information about human rights is lacking due to restrictions on civic space?

Session 5: What do we currently expect of businesses doing business in places with civic space restrictions? Group presentations and internal group discussion

a. Do civic space restrictions factor into our due diligence on clients/investees? How?
b. Do we have experience communicating our expectations to businesses that do business in places with restricted civic space?
c. What dilemmas and learning have we had, based on these experiences?

Session 6: What can businesses doing business in places with civic space restrictions do to manage risk? Discussion with external experts

a. How have businesses tried to manage risk when they are doing business in places with civic space restrictions?
b. Do we have examples of leading practice – or learning from mistakes?

Expert speakers: Lloyd Lipsett, LKL International Consulting Inc., Rebecca MacKinnon, Vice President Global Advocacy, Wikimedia

Session 7: What should we expect of businesses doing business in places with civic space restrictions? Internal group discussion, preceded by input from expert speaker

a. What would be an appropriate expectation of businesses doing business in these contexts?
b. Does it differ from 'normal' due diligence expectations?

Expert speaker: Bennett Freeman, Associate Fellow in the International Law at Chatham House, author of "Shared space under pressure: business support for civic freedoms and human rights defenders," Business & Human Rights Resource Centre and International Service for Human Rights, 2018.

Session 8: What are perspectives from civic space advocates working directly in countries where civic space is limited, regarding how businesses can either perpetuate or alleviate civic space restrictions in their country? Discussion with external experts

Expert speakers: Asha Abinallah, CEO, Media Convergency; Michael Khambatta, Geneva Representative, Gulf Centre for Human Rights; Nompilo Simanje, Legal and ICT Policy Officer, Media Institute of Southern Africa

No
news
is
bad
news