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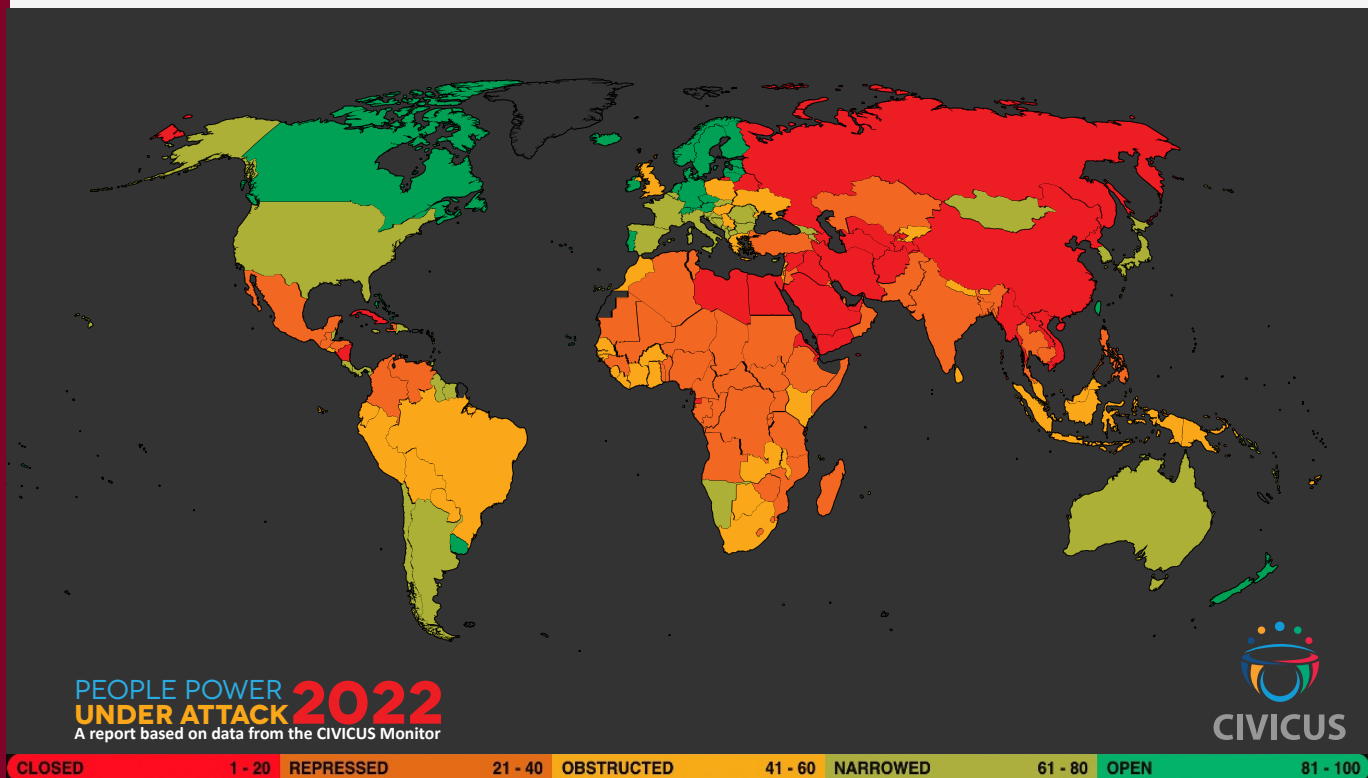


People protest on the street in Hong Kong on 1 July, 2014. Photo via Adobe Stock.

*In April 2023 ABN AMRO, APG Asset Management, ING, Robeco and Morningstar Sustainalytics published the paper “**No News is Bad News**” which explores how financial institutions can strengthen human rights assessments of business activities in areas where civic space is restricted. In Spring 2023, Shift held a peer-learning session of its **Financial Institutions Practitioners Circle (FIs Circle)** to hear more from ABN AMRO and ING about the topics in the paper and to discuss in detail the urgent challenge of addressing impacts on the rights of human rights defenders and the phenomenon of shrinking civic space. This resource captures some of the take-aways from that session, as well as drawing on Shift’s experience working with our partners.*

# WHAT ARE HUMAN RIGHTS DEFENDERS – AND WHAT IS SHRINKING CIVIC SPACE?

Open civic space means that people are able to exercise their civic rights and freedoms, such as freedom of expression, freedom of association and peaceful assembly, and the right to participate in public life. The shrinking of civic space refers to the upward global trend to restrict this space previously provided to independent civil society.<sup>1</sup> This can look like restrictions on press freedom, restrictions on unions and protests, harsh criminal sentences for protestors, laws which restrict NGOs from receiving funding, and surveillance and harassment of journalists and human rights defenders. In particular, harassment and detention of protestors is on the rise, including in Myanmar, Afghanistan and Iran where protestors have called for political change; in central and south America where people have protested against rising costs of living; and in Europe where climate change activists have been arrested.<sup>2</sup>



Civicus Monitor, report on state of civic freedoms globally. See: <https://monitor.civicus.org/globalfindings/>

According to the United Nations (UN), human rights defenders are “people who, individually or with others, act to promote or protect human rights in a peaceful manner.”<sup>3</sup> A wide range of actors may be human rights defenders; small-scale farmers, indigenous people defending their land, climate activists, and those who have made it their profession – such as trade union leaders, or those working within human rights NGOs.

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*UN Human Rights Office of the High Commissioner*

In 2022, the Business and Human Rights Resource Centre tracked 555 attacks (lethal and non-lethal) against human rights defenders and found that an average of more than 10 defenders were attacked per week for raising concerns about irresponsible business activity. **At least 401 human rights defenders were killed in 2022 because of their human rights activism.**



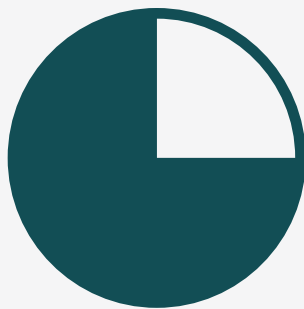
In 2022, on average, more than 10 defenders were attacked per week for raising concerns about irresponsible business activity.

*Source: Business and Human Rights Resource Centre*

These lethal attacks take place within a broader climate of intimidation and harassment: threats, physical attacks, detention,

legal action and surveillance. The increasing use of strategic lawsuits against public participation, so called “SLAPP suits” as a form of judicial harassment has come under particular scrutiny recently.

Notably, the Business and Human Rights Resource Centre estimates that approximately 75% of attacks against human rights defenders recorded in 2022 were against **climate, land and environmental defenders** and over a fifth were against **Indigenous defenders** – who only comprise 6% of the global population, but protect over 80% of the world’s remaining biodiversity.



Approximately 75% of attacks against human rights defenders recorded in 2022 were against climate, land and environmental defenders

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# WHY ARE THREATS TO HUMAN RIGHTS DEFENDERS AND SHRINKING CIVIC SPACE IMPORTANT FOR FINANCIAL INSTITUTIONS?

## 1. FINANCIAL INSTITUTIONS RELY ON INFORMATION FROM CIVIL SOCIETY TO DO HUMAN RIGHTS DUE DILIGENCE.

Financial institutions (FIs) rely on information from civil society to understand and manage risks related to their business, including human rights risks. Under the UN Guiding Principles on Business and Human Rights (UNGPs), financial institutions, like all business enterprises, have a responsibility to conduct due diligence to understand and address human rights impacts they may be involved with, including through their financial products and services.

This responsibility is increasingly being codified in legal frameworks. Investors and lenders working with Shift often highlight the extent to which they rely on reports from and engagements with civil society, as well as negative media scanning, to help shape their understanding of higher risk contexts. This informs lending, banking and investment decisions and their approach to responding to human rights challenges. **Simply put, financial institutions rely on civil society for human rights due diligence.**

The *No News is Bad News* publication underlines this important point: “[A] risk assessment is only as good as the information that supports it.”<sup>4</sup> Civic space restrictions leave financial institutions with blind spots about human rights impacts connected to their businesses. This makes it difficult for FIs to adequately address human rights impacts in accordance with international expectations, which in turn can expose FIs to reputational and legal risks.

## 2. HUMAN RIGHTS DEFENDERS AS THE “LAST LINE OF DEFENCE”

Civic space restrictions often signal a higher risk context for human rights. Where human rights defenders are intimidated and silenced, it is likely that human rights impacts on others will increase or become more acute.<sup>5</sup> As such, taking steps to prevent negative impacts on human rights defenders is likely to have positive repercussions for preventing negative impacts for a large number of people.

This is also relevant in relation to human rights impacts related to climate change and biodiversity loss. Addressing climate change and protecting biodiversity are a key priority for many financial institutions. At the same time, as noted above, human rights defenders standing up against environmental destruction – namely environmental, land and Indigenous defenders – are particularly vulnerable to attacks.<sup>6</sup> Environmental, land and Indigenous human rights defenders are often the “last line of defence” against environmental destruction, and are put under threat when other controls have failed.<sup>7</sup> As such, enabling the protection of their rights is crucial to FIs’ efforts to protect the environment and biodiversity and combat climate change.



People's Climate March, Washington, United States, 2017. Photo by Vlad Tchompalov via Unsplash.



# WHAT ARE SOME OF THE CHALLENGES FINANCIAL INSTITUTIONS FACE WHEN ENGAGING WITH CIVIL SOCIETY AND HUMAN RIGHTS DEFENDERS? HOW CAN THEY BE OVERCOME?

## **1** OVERCOMING FEAR AND MISTRUST OF HUMAN RIGHTS DEFENDERS

There is often a trust deficit (on both sides) between financial institutions and human rights defenders or civil society organisations. A bank may feel that NGOs have their own agenda, and worry that NGOs or defenders will use information shared in an engagement to “name and shame” them. Equally, human rights defenders and NGOs may not trust the motives or commitment of “big banks” on human rights. This lack of trust does not sow the seeds for productive engagement and collaboration.

Financial institutions may also be restricted in what they can disclose externally about whether or how they are engaging with clients on human rights topics, or whether they have made divestment decisions on human rights grounds.

### WHAT FIS CAN DO: BRIDGE THE GAP BETWEEN FINANCIAL INSTITUTIONS AND CIVIL SOCIETY

We hear from banks that engaging with impacted people is very powerful. It builds understanding of human rights issues at senior levels of the business, and helps them understand how they should respond to specific issues, informed by the perspectives of impacted people.

Some financial institutions report that even though they cannot share specifics about transactions or client engagements, they can still have dialogue about their processes and approach, and obtain concrete ideas on existing or innovative approaches through constructive exchanges with civil society. Such exchanges are helpful for both parties.

To address the trust deficit, some financial institutions take proactive steps to build relationships with civil society organisations; sharing information and seeking input to inform their human rights due diligence. This is in contrast to a reactive approach of responding only to civil society campaigns or allegations, or an approach that treats any attempts at dialogue as risk. Proactively seeking information and building relationships outside of specific conversations about ongoing impacts can help to build trust and a more productive, rather than combative, dynamic between civil society actors and FIs.

## 2

### THE UNIQUE EXPERTISE & SKILLSET REQUIRED FOR EFFECTIVE ENGAGEMENT

Participants in Shift's FIs Circle observed that direct engagement with human rights defenders and potentially affected people can be very sensitive, and requires certain skills to engage in a professional, empathetic and respectful way, without putting people at risk.

#### WHAT FIs CAN DO: CHECK IN-HOUSE CAPACITY

Financial institutions can consider whether they have the required skills in-house, or whether it would be beneficial to work with an appropriate third party to engage with human rights defenders or affected people. One bank shared that they found engagements with affected people most productive when facilitated by NGOs that were trusted by affected groups.

### 3 POLITICIZATION IN CONTESTED POLITICAL ENVIRONMENTS

Some financial institutions may be wary of engaging with human rights defenders for fear of being perceived as “taking a side” within a contested political environment: for example, being seen as taking a position against a national government, by engaging with a group or person that the national government actively opposes.

#### WHAT FIs CAN DO: TAKE A CLEAR STANCE ON RESPECTING HUMAN RIGHTS DEFENDERS

During Shift’s FIs Circle meeting, a guest representative from a real economy company shared that their company makes clear to all stakeholders that their approach is to respect human rights defenders, and to actively step in if human rights defenders are under threat for protesting against their company, whether or not they agree with the human rights defender’s approach or arguments. This stance is reflected in a clear policy and public position: to engage and to respect freedom of expression, even when the company does not share the same views as human rights defenders, NGOs or others, as long as they are working lawfully and peacefully. This approach has helped to de-politicise any interactions with human rights defenders, as the company’s interventions are about defending civic space, regardless of the issues under debate.

### 4 GATHERING NECESSARY INFORMATION FROM CLIENTS

Engaging with clients on these topics can also be challenging. On the one hand, clients may not have a good understanding of human rights issues, nor of the purpose and value of identifying and managing potential impacts on people, including through engagement with human rights defenders and civil society groups. On the other hand, even if a client has a mature understanding of human rights risks and, for instance, uses its influence with local government to protect and promote civic space, they may be unwilling or unable to share this information.

## WHAT FIs CAN DO: KNOWLEDGE BUILDING ON CIVIC SPACE

Some of the banks in the FIs Circle recommended using existing data sources, such as the CIVICUS monitor<sup>8</sup> which assesses civic space conditions worldwide, to build knowledge of a given context before planning an engagement in a place where civic space is restricted.

For financial institutions seeking information on how clients are approaching this issue, it can be helpful to ask about governance/ policy commitments and practical examples of how those principles are put into practice on the ground. FIs should speak with country-based personnel or practitioners within client organisations wherever possible, rather than investor relations or corporate affairs staff at a head office, in order to get practical insights beyond the “legalese” of approved public statements.

Where their clients are operating in contexts where civic space is restricted, financial institutions can encourage their clients to develop policy commitments or clear internal approaches for respecting human rights defenders. These can help clients when navigating individual cases, where it may be difficult to determine what to do without pre-existing guidance that reflects clear principles. As above, it can also help to diffuse political tension, for instance, when engaging with government representatives, if company personnel can point to internal policies that set out a commitment to respect the rights of human rights defenders and civic freedoms. This is one avenue for FIs to build client capacity on these topics.

## BROADENING THE FOCUS

Financial institutions and their clients can make public commitments to support human rights defenders in peril; including if they have been arbitrarily arrested, detained or threatened. For instance, Adidas Group, an apparel retailer, has made a public declaration stating that where there are credible reports of a human rights defender being threatened, intimidated, or detained by the police or by government officials, they will raise this with the relevant government.<sup>9</sup> Del Monte Pacific Limited, a food and beverage company, has made a public commitment stating that the company does not tolerate threats, harassment or attacks against human rights defenders, noting further that the company and its business partners should encourage stakeholder engagement.<sup>10</sup>

Recognising the increasing vulnerability of human rights defenders and the shrinking civic space within which they can operate safely is hugely important, as are public commitments to take action where human rights defenders are threatened. Such public statements are commendable and should be encouraged.

Andy Hall, a migrant rights activist and human rights defender who participated as a guest speaker in the FIs Circle, suggests that companies and FIs also explore ways to support human rights defenders **before** situations escalate. This means considering:

- **the channels available to civil society and human rights defenders** to influence and improve practices of higher risk clients, and how FIs can set expectations with portfolio companies about improving those channels;
- **how FIs and clients can support civil society actors to “speak the company’s language”** in order to share their knowledge on risks and impacts with companies in a way that resonates and is actionable;
- **how FIs can use influence with government actors** to contribute to an environment where civic freedoms are respected.

This is not to suggest discontinuing work to identify and address risks to human rights defenders – this work is still crucial. Rather, it is about broadening the focus, to additionally explore where taking action and using leverage could prevent human rights defenders from coming under attack in the first place.

## ENDNOTES

- 1 Civicus Monitor, Global Findings, <https://monitor.civicus.org/globalfindings/>
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## ***Human Rights Defenders and Shrinking Civic Space: a guide for Financial Institutions***

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### **ABOUT SHIFT**

Shift is the leading center of expertise on the UN Guiding Principles on Business and Human Rights. Shift's global team of experts works across all continents and sectors to challenge assumptions, push boundaries, and redefine corporate practice, in order to build a world where business gets done with respect for people's dignity. Shift is a non-profit, mission-driven organization, headquartered in New York City. Visit [shiftproject.org](https://shiftproject.org) and follow us at @shiftproject.



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### **ABOUT SHIFT'S FINANCIAL INSTITUTIONS PRACTITIONERS CIRCLE**

Shift's Financial Institutions Practitioners Circle is a carefully designed space for practitioners working within financial institutions to discuss human rights challenges and co-create cutting-edge solutions that fit their unique reality. In addition to peer conversations, Shift's FIs Circle membership provides access to 101 training on core concepts of the UNGPs – including remedy – to which members may invite key internal stakeholders from across the institution. To learn more visit: [shiftproject.org/fiscircle](https://shiftproject.org/fiscircle) or contact us at: [info@shiftproject.org](mailto:info@shiftproject.org).