

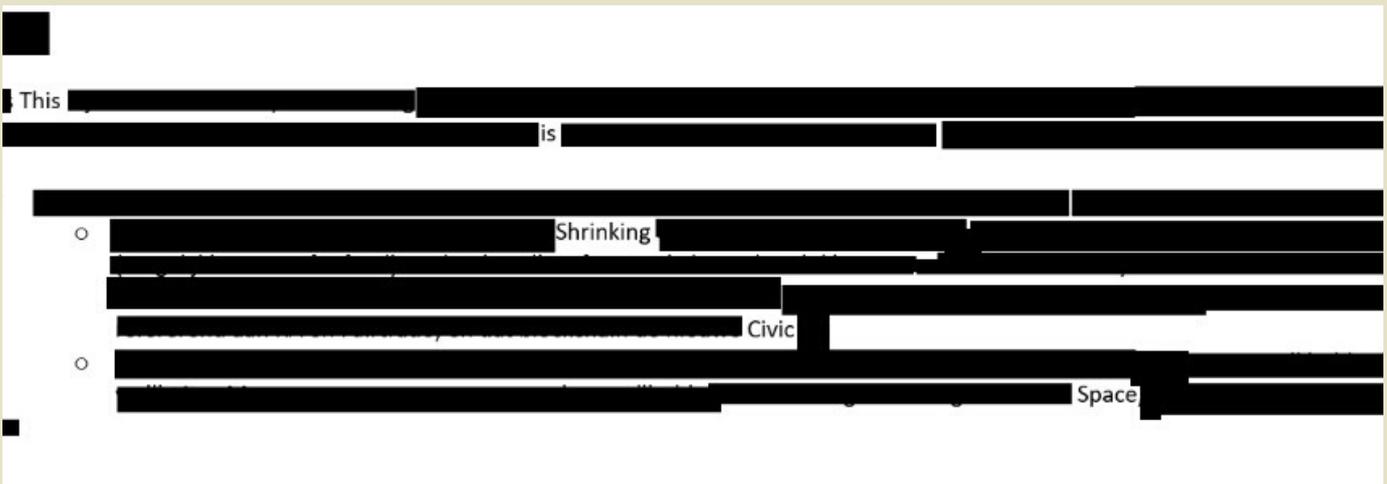
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# THE SHRINKING OF CIVIC SPACES WHAT IS HAPPENING IN THE NETHERLANDS?

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“Charities fear loss of ‘major donors’ due to new law”, Dutch newssite NU.nl headlined in February 2019. (1) This newsitem discussed the far-reaching new draft law entitled “Transparency of civil society organisations (CSOs)” (“*Transparantie maatschappelijke organisaties*”). The draft law in question is developed by the Ministry of Security and Justice and aims to make national and international donations towards CSOs more transparent by mapping them. These institutions range from NGOs to scouting clubs, from charities to churches. In essence, this draft law holds that every Dutch person who chooses to donate an amount of more than 15,000 EUR to a charity must disclose their name, place of residence and the exact amount of the donation. The main aim of the law, as stated, is to prevent that foreign actors buy influence through cash flows.

Nevertheless, it is generally assumed that this law actually seeks to prevent suspicious foreign financing of mosques in the Netherlands, so they will not fall prey to extremist ideologies. (2) If this draft law were to be passed and enacted, however, it could potentially contribute to the shrinkage of civic space in the Netherlands.

“Shrinking civic space”, a term coined in 2011, (3) seems to have been a buzzword in the international development sector for a while now. However, in order to grasp this phenomenon which has been identified relatively recently, it is important to dismantle the term: only by understanding what civic space is, can we understand what the ramifications of its shrinkage are and why the draft law on the transparency of CSOs could be a major contributor to it.

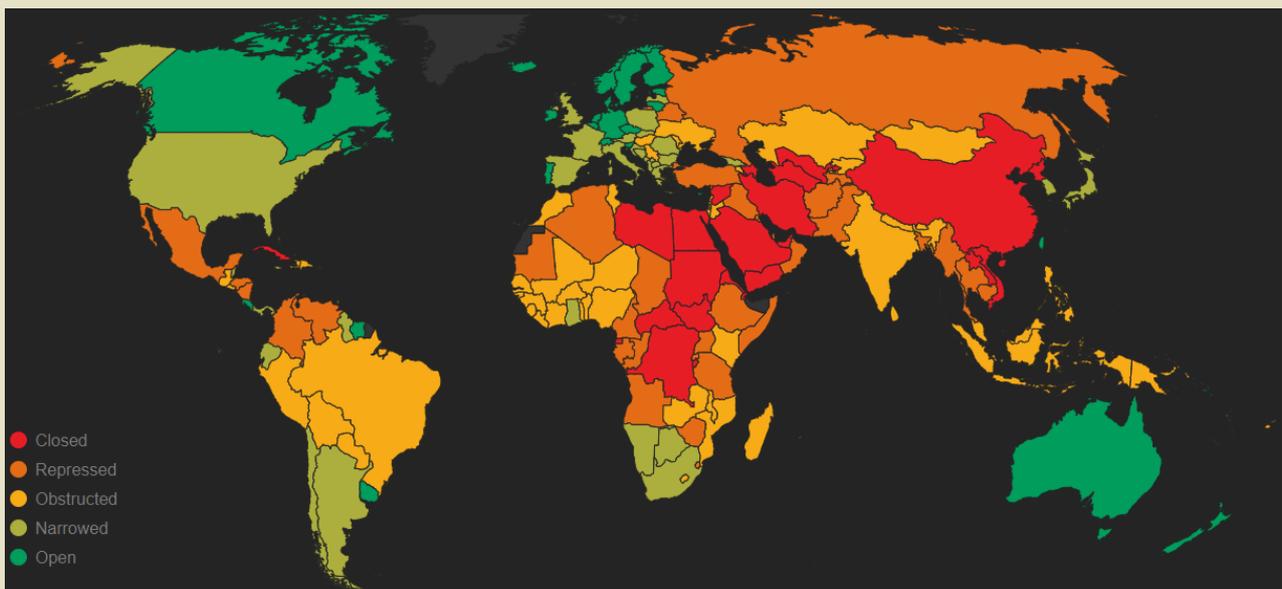
# (Shrinking) civic space

Civic space can be defined in various ways, but generally it is regarded as “the arena in which civil society can function”. (4) The boundaries of this arena are defined by three different civil rights, being the right to freedom of expression, association, and peaceful assembly. (5) Civic space can thus be seen as a space where individuals and organisations, which do not fall within the market and state sphere, can express ideas, interests and views and influence and shape policy-making. Civil society actors can range from large international NGOs, to grassroots social movements, to individual human rights defenders. When we speak about the concept of shrinking civic space, we refer to “the problems of exclusion and repression that many social, political and civil rights movements [face]” (6). This goes hand in hand with the erosion of aforementioned rights, which is known as “democratic backsliding” (7): the transformation of a democracy to a less democratic regime, such as a so-called illiberal democracy. (8)

Two important notes must be made with regard to shrinking civic space. First, it is important to realise that the shrinkage of civic space is a very subjective enterprise: not all civil society actors experience it in the same way and to the same degree. This is why some may argue that civic space is not shrinking at all, but instead is transforming. (9) In other words:

“A wave of closures of civic space has occurred around the world, notably in the last decade, but not all civil society actors are equally affected: the objects of new restrictions are typically groups and organisations from a liberal and human rights tradition, often aid-funded and with strong transnational links, as well as their allies in social movements, the media and academia.” (10)

Second, connected to the first point, it is important to recognise that repressive forces are not necessarily formal state institutions, but may also comprise non-state actors, sometimes outsourced by the state. (11) Thus, as shrinking civic space can manifest itself in a variety of ways to a variety of actors, a one-size-fits-all solution falls short.



CIVICUS Monitor tracking civic space in 196 countries (October 2019)

# Contributors to the shrinkage of civic space

Even though the shrinkage of civic space is not experienced equally by all civil society actors, it is nevertheless possible to identify certain “ingredients” of shrinking civic space. These ingredients reflect a decrease in the space that citizens and organisations have to freely share their ideas, organise themselves and participate in the public debate. (12)

1

## **Political repression and regulatory restriction of CSOs**

The regulation of CSOs can be seen as problematic if these rules and restrictions are applied selectively to further certain political ends. (13) An example is legislation passed in Hungary which makes it almost impossible for NGOs, which allegedly support migration, to get registered and carry out their work. (14)

2

## **Political repression of different kinds of citizens**

As mentioned before, the rights to freedom of expression, association and assembly are seen as cornerstones of an open and plural civic space. When these, and other rights, are infringed, citizens are hindered from participating in and shaping public debate.

3

## **Media capture/shrinking media sector**

One of the most defining characteristics of a shrinking civic space is the repression and harassment of journalists. As a result of this intimidation, they are hampered in carrying out their work as watchdogs, exposing injustice and crimes, and holding governments accountable. (15) Indeed, free and independent media are necessary for democratic checks and balances.

4

## **Decreasing funding opportunities for CSOs**

The existence of many CSOs is threatened because of great cuts in the development budget. While this in itself is perhaps not an active strategy to shrink civic space, it really limits the room CSOs have to implement projects and engage in lobby activities, and additionally creates greater competition amongst CSOs for funds. Stricter requirements for funding can also lead to favouring less politicised organisations and issues. (16)

5

## **Decreasing political opportunities for CSOs to influence policy**

The space for CSOs quite literally shrinks when they are not offered a seat at the policy table anymore. A government might prefer the input of other (less politicised or controversial) actors, which in turn impedes space for political engagement and lobbying by other CSOs. (17)

# Shrinking civic space in the Netherlands

When we think about shrinking space, we often think about the way it plays out in the so-called "Global South". Nevertheless, repression is also taking place closer to home, for example in Hungary and Poland. Moreover, civic space is not a given in the Netherlands either, as demonstrated by the draft law on the transparency of CSOs.

Many charities in the Netherlands, such as Amnesty International Netherlands or Natuurmonumenten, regularly receive large gifts from people who feel genuinely involved in their mission, without a double agenda. They almost always want their gift to be treated confidentially. It is seen as an intimate and personal choice to donate to a good cause. (18) When this draft law becomes effective, it is assumed that many of these benefactors will no longer engage in charitable giving. They might not want to be publicly known for donating to certain charities, or to show off about the amount of money they possess. (19) Several CSOs have already expressed their concerns with regard to the discontinuation of large donations, because they are largely dependent on donations like these for the continuation of their activities. For example, Amnesty International Netherlands reported having received 24 donations exceeding 15,000 EUR in 2018. (20)



The draft law seems to fall into the category of a regulatory restriction of civic space. Its main objective is not to restrict CSOs, but this might be one of its unintended effects. The Dutch Society for Law ("*Nederlandse Vereniging voor Rechtspraak*") has warned that the Dutch government already has other far-reaching options in place to combat the undesirable influencing of CSOs, and that this draft law would thus be unwelcome. (21) Other experts claim that the draft law is disproportionate (meaning that the instrument and its implications are too big for the objective it aims to achieve) and that it impedes human rights such as the freedom of expression and the freedom of association. (22) The latter also includes the right for CSOs to earn income without state intervention. (23) As mentioned previously, these rights form the cornerstones of civic space.

Furthermore, the Venice Commission, an advisory body to the Council of Europe, has stated that “the need for transparency in the internal functioning of associations is not specifically established in international and regional treaties [...]. However, openness and transparency are fundamental to establishing accountability and public trust. The state shall not require but shall encourage and facilitate associations to be accountable and transparent.” (24)

In a similar case that involved Romanian legislation that aimed to make money flows of CSOs transparent in order to combat money-laundering, the Venice Commission ruled that such legislation is undesirable if there is no imminent danger. (25)

In short, the draft law might have serious implications. Donors might stop donating, and this in turn impacts the activities that CSOs can take up. It is also not clear whether this law is actually proportionate to the aim it seeks to achieve, and what its impact is on CSOs' freedom of speech and association. This example shows that there are many factors that can lead to the shrinkage of civic space, not only in countries which are often seen as the "usual suspects", but also in countries such as the Netherlands. Right now, consultations about this law within the Ministry of Security and Justice are still going on. If this law were to be implemented, it would pose a serious threat to the civic space in the Netherlands. And that is something we should not want.

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