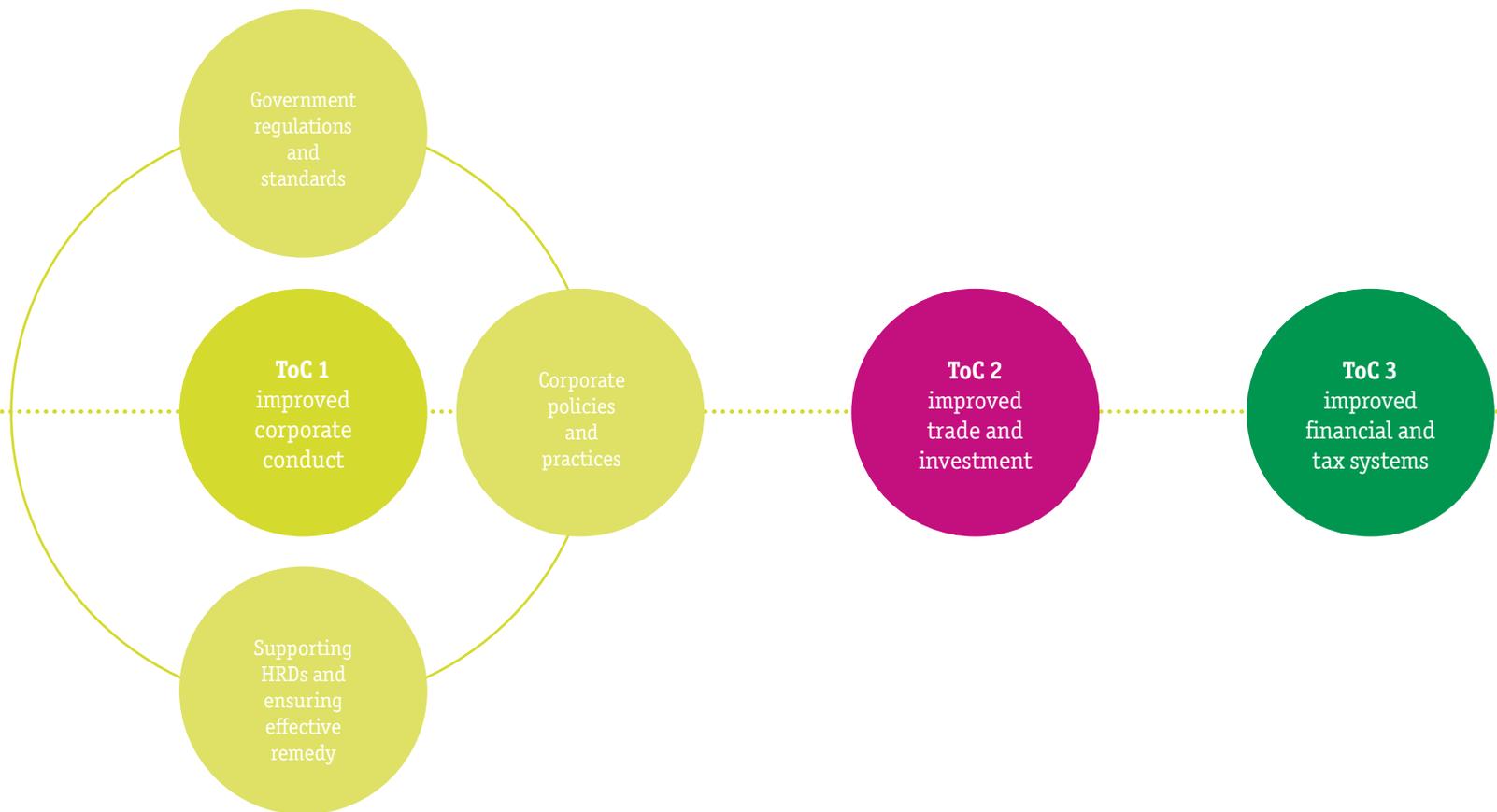


The current state of affairs on corporate conduct

The Fair, Green and Global Alliance's interpretation of its
ToC1 baseline study

In January 2016, the Fair, Green and Global (FGG) Alliance (ActionAid Netherlands, Both ENDS, the Clean Clothes Campaign, Milieudefensie (Friends of the Earth Netherlands), SOMO and Transnational Institute) has entered a Strategic Partnership for Dialogue and Dissent with the Dutch Ministry of Foreign Affairs. This partnership is aimed at contributing to socially just, inclusive, environmentally sustainable societies within three interlinked leverages, or Theories of Change (ToC):



Between January and July 2016, a baseline study of ToC1 was carried out by Context, international cooperation. This study, which was organised as a context analysis and stakeholder review, aimed to clarify the current state of affairs of corporate conduct worldwide; the status of relevant policy processes with regard to corporate conduct; the space available to Civil Society Organisations (CSOs) to intervene in these policy processes; and the main assumptions in FGG's Theory of Change on corporate conduct.

The baseline study was developed in a participative process, whereby FGG Alliance members were asked to write concept notes, participate in two rounds of discussions, provide additional written inputs and give feedback to the draft report. Context, international cooperation combined all inputs from the FGG Alliance members and used desk research and interviews with FGG partner organisations, academics, Northern and Southern CSOs and representatives of European governmental bodies, to triangulate, update and find references for the common understanding of the FGG Alliance. Gaps and other questions were researched further, based desk research and interviews with external experts.

This summary contains information found by the researchers. The contents of this summary do not necessarily reflect the position of the FGG Alliance in these matters. This summary does give an overview of what we as FGG Alliance consider the most important and relevant outcomes of the study. The full reports (including lists of abbreviations), along with a management letter, which includes a response of the FGG Alliance to the study reports, can be found on the [FGG website](#).



1. The baseline on the FGG Alliance's Outcome Areas

The FGG Alliance has defined six Outcome Areas that together and in an iterative process lead to improved corporate conduct. Some major insights resulting from the baseline for each of these Outcome Areas are:

A

enabling environment

Political space for CSOs is shrinking, whilst the distance between corporate and political decision-making is diminishing. These worrisome developments are countered by work on mechanisms to improve space for civil society to participate in policy-making, e.g. through the Civil Charter for People's Participation. An emphasis on informing local communities about their rights would greatly enhance development of a more enabling environment. Southern CSOs also see potential in positive action approaches, as well as in getting grievance mechanisms established and used, particularly where a matter could be resolved directly between a workforce or community and a company.

C

alternatives developed

In the global South, alternatives are developed and brought to practice, but capacity to promote these alternatives is often limited. Also in the global North, alternatives are developed, though the current state of affairs on corporate conduct in the global North is merely reactive: it focuses on 'do no harm' instead of building equitable and democratic societies in a proactive manner.

E

policy change

Quite some policies and legislation are in place for improving corporate conduct, both in the global North and South, but these are mostly voluntary. There still is a lack of agency on the part of governments to put in place mechanisms to foster transparency and hold corporations accountable; and there are too few binding standards that transcend domestic borders of corporate headquarters. The latter is where the potential of the UN Treaty is seen to lie.

B

capacities strengthened

In the global South, weak government bodies hamper improved corporate conduct: capacities are limited among those that should enforce policies and legislation. CSOs both in the North and South could benefit from capacity development support on lobby and advocacy, as well as knowledge exchange on cases of corporate misconduct (South-South, North-South and South-North).

D

agendas set

According to interviewees, improving corporate conduct is clearly on the agenda in the global North, though there are doubts about the level of ambition of this agenda. There is ground to be gained in setting government agendas for binding standards and convincing corporations to set higher benchmarks for acceptable conduct.

F

practice change

Even where policies and laws which would improve corporate conduct are in place, enforcement of these policies and legislation is often a huge problem. Especially in the global South, the ability of local authorities to ensure corporate adherence to regulation is highly limited, particularly with respect to transnational corporations. Mechanisms in place to address corporate misconduct are not always sufficiently known and accessible. Ensuring the implementation of good existing policies and laws is seen, therefore, as a highly relevant field of work for the FGG Alliance.

2. Mutual capacity development for improved corporate conduct

Mutual capacity development in the FGG programme

The FGG Alliance defines mutual capacity development as a process of strengthening skills, knowledge and network contacts, involving FGG Alliance members, Alliance partner organisations (CSOs) in LLMIC and other countries, and key networks and their members as equal partners. FGG Alliance members and partner organisations are all part of the same global network contributing to a socially just, inclusive, environmentally sustainable world, by combining their complementary roles, locations, expertise and capacities, and by mutually enforcing capacities to better lobby and advocate.

Capacities are strengthened through:

- Direct capacity development: trainings, workshops, et cetera, contributing to knowledge and organizational capacity;
- Indirect capacity development: mutual learning, skills development and strengthened network contacts through joint research, lobby and advocacy processes and collaboration;
- Capacity development as a result of lobby and advocacy efforts and results: capacity development can be a result of changes achieved through the FGG programme, or in general efforts made to influence policies. Programme results regarding, for example, an enabling environment for civil society might contribute to increased legitimacy and credibility of FGG partner organisations; or policy shifts achieved in the North might open new opportunities for Southern partners to influence international policy or their own governments.

Mutual capacity development is an integral component of the FGG programme in general and ToC1 specifically. Mutual capacity development in the FGG programme is geared towards contributing to the advocacy, research and networking capacity of FGG Alliance members and their partners. A separate baseline study of mutual capacity development was carried out between March and July 2016. This study shows that when it comes to Improved Corporate Conduct, the current state of capacity is as follows:



Advocacy capacity

Lobby (e.g. with governments and brands), campaigning and awareness-raising (e.g. with regard to the safety of garment factories in Bangladesh) are core strengths of FGG Alliance members and their partners. Many of them have ample experience in connecting different actors in supply chains or around specific issues, and in mobilising grassroots and communities to claim their rights. They are able to adequately respond to emerging issues such as the Rana Plaza collapse.

Room for improvement lies in developing lobby and advocacy strategies and adequate planning. In order to enhance the Alliance's eventual influence on policy makers, it could help to better link national level to international level legal work against corporations. This planning still requires flexibility to adapt and respond to changing circumstances, which is another area in which several FGG Alliance members and partner organisations wish to learn. They could also learn to better bring together different actors, mobilising them, and building movements at different levels.

Research capacity

FGG Alliance members and their partner organisations are highly knowledgeable and renowned for their expert role, e.g. with regard to business and human rights. Related to their expertise is the research capacity of many within the FGG Alliance, ranging from evidence-based research and sharp analyses to case studies, for example on human rights violations by international companies.

Timely and continuous generation of relevant information and data, for example, through corporate research and investigative journalism, is an area in which FGG Alliance members and partner organisations aim to further develop themselves.

Networking capacity

FGG Alliance members and their partner organisations have far-reaching network contacts, both with lobby targets (such as governments, private sector bodies and decision-makers at several levels) and with like-minded organisations and relevant networks.

FGG Alliance members and partner organisations wish to extend their engagement in relevant networks, increase contact with 'different-minded organisations' and tap into each other's networks, specifically working in the same region or on similar issues.

3. The current situation on corporate conduct

In addition to the baseline on the FGG Alliance's Outcome Areas and mutual capacity development, a descriptive analysis has been made of the current state of affairs on corporate conduct, researched and documented as per the FGG Alliance's thematic working areas:

1. Government regulations and standards

Governments are addressing corporate (mis)conduct generally through non-binding regulation, e.g. using the UN Guidelines (UNGPs) or National Action Plans according to the OECD guidelines. This legislation is often restricted to the domestic borders of the country in which the corporate headquarters are located. Where national governments in the South have legislation to hold corporations accountable - which is increasingly often the case - enforcement of this legislation falls short. Governments are still rather weak compared to big transnational corporations, especially in the global South.

Several (multi-stakeholder) initiatives have been adopted to address corporate misconduct, though they seldom stimulate governments to take real (binding) action. Corporations increasingly create their own 'social responsibility' working agendas that provide an opportunity to hold them accountable to these self-set goals. However, this situation also creates a non-binding, parallel process to accountability by law. And at the same time, space for civil society to intervene in government policies, and to engage with corporates over corporate conduct is shrinking.

On a positive note, the ratification of standards (such as the OECD guidelines or ILO Better Work Programmes) creates space for national governments to more explicitly denounce and take action in cases of corporate misconduct. Also the UN Treaty process is promising, according to CSOs. The UN Treaty could lead to a legally binding instrument to hold transnational corporations accountable for their (mis)conduct. This would address a governance lacuna, where national governments are unwilling or unable to do so. While the UN Treaty process is still in a very early stage, it is already stirring up the discussions on legal liability for corporate misconduct in respect of human rights transgressions.

2. Corporate policies and practices

Transnational corporations (TNCs) are increasingly aware of the relevance of addressing cases of corporate misconduct. Nevertheless, improvements are hampered by non-transparency in supply chains; and the fact that local regulation is often ineffective in stopping TNCs' misconduct. Several respondents of this baseline study (representatives of corporations, respondents from EU bodies and certain Northern CSOs) have put forward the perspective that what more often leads to changes in TNCs' strategic choices and conduct is (risk of) reputational damage. These respondents see constructive cooperation among different parties working on the same agenda, preferably with an independent overseer (e.g. the SER in the Netherlands), as promising for improved corporate conduct.¹ In certain sectors and cases in the global South, potential is observed in bringing corporations and local CSOs together, to learn from each other, complement each other and to jointly foster supplier transparency and reliability.

3. Supporting HRDs and ensuring effective remedy

Human rights are being threatened by many corporations in the global South. Although there is pressure on international brands, real change on the ground is limited: local producers/suppliers are seldom pushed to adhere to certifications and OECD guidelines; transparency in local factories is lacking; and many producers/suppliers have ways of circumventing their responsibilities towards employees and other people affected by their misconduct.

Knowledge of people in the global South of their rights is often limited, access is further circumscribed by inequitable resources, and even where a case is brought successfully the legal apparatus is generally too weak to enforce legislation and improve the actual human rights situation. Currently existing mechanisms to address human rights violations, notably non-judicial grievance mechanisms and NCP cases, do have some impact and certainly potential, but are often time-consuming and expensive. Further, they rarely guarantee the safety and protection of human and environmental rights defenders, or redress where these are violated. While spaces for civil society to be heard formally exist in most places, access and effect is often heavily circumscribed by relations of power.

¹ NB two FGG members who were originally involved in such initiatives in the Netherlands, the sectoral covenants, have not signed these covenants, as these members do not consider them sufficiently binding and transparent, and because local stakeholders are not involved in the governance.

4. Policy processes relevant for the FGG Alliance

Looking at the current state of affairs of corporate conduct worldwide, a number of policy processes can be identified that are relevant for the FGG Alliance and which may inform strategic decision-making in the FGG programme:

Organisation for Economic Cooperation and Development (OECD)	<ul style="list-style-type: none">• Human rights due diligence, guidance for responsible agriculture supply chain, due diligence on responsible mining, guidelines for multinational enterprises, due diligence guidance for responsible supply chains in the garment and footwear sector
United Nations	<ul style="list-style-type: none">• UN guiding principles on Business & Human Rights• OEIGWG Process at UNHRC; an open ended inter-governmental working group mandated to develop a legally binding instrument/treaty on TNCs and other business enterprises with respect to human rights• Special rapporteur system
International Labour Organisation	<ul style="list-style-type: none">• Labour standard setting & monitoring
African Union	<ul style="list-style-type: none">• Mining vision, model mining legislation, land policy initiatives, African commission on human rights & people's rights/Africa year of HR
Association of Southeast Asian Nations (ASEAN)	<ul style="list-style-type: none">• Post 2015 strengthening of human rights processes and protections through mechanisms of AICHR, ACWC, ACMW (ASEAN Declaration for the Promotion and Protection for the Rights of Migrant Workers)
Latin/Central America (LAC)	<ul style="list-style-type: none">• Inter-American Commission on Human Rights mechanisms protecting, promoting and monitoring human rights violations• Petition system and Country and Regional Hearing
European Union	<ul style="list-style-type: none">• Non-financial reporting, deforestation action plan, energy directive, global value chains, Amsterdam declaration, conflict mineral law, EU Guidelines for Human Right Defenders, directive on disclosure of non-binding guidelines on non-financial information by large companies and groups, flagship initiative for the responsible management of the supply chain in the garment sector• Council of Europe human rights mechanisms• EP and National Parliament Human/Environmental rights processes• Policy Coherence for Development (PCD)

Roundtables	<ul style="list-style-type: none"> • Roundtable for Responsible Soy (RTRS), Roundtable for Sustainable Palm Oil (RSPO)
Alternative Judicial Mechanisms	<ul style="list-style-type: none"> • Corporate NJGM's, IAM, UA, Inter-state dispute settlement
Domestic legislation	<ul style="list-style-type: none"> • UK Modern slavery act, Bangladesh Accord of Safety and Fire, Freedom of Association Protocol in Indonesia, Minimum Wage Myanmar, Dutch sector agreements; French bill on due diligence; German Textile Alliance
Corporate initiatives	<ul style="list-style-type: none"> • UTZ, Rainforest Alliance, MSF, Better Coal Initiative
United States	<ul style="list-style-type: none"> • Dodd-Frank Act, California Transparency Act • Alien Tort Law/Alien Tort Statute (ATS) allowing that those responsible for human rights abuses committed abroad can be sued in U.S. federal courts
Sustainable Development Goals	<ul style="list-style-type: none"> • SDG 8.8. Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment. • SDG 12.6. Encourage companies, especially large and transnational companies, to adopt sustainable practices and to integrate sustainability information into their reporting cycle
Voluntary Guidelines on the Responsible Governance of Tenure (VGGT) & Free, Prior and Informed Consent (FPIC)	<ul style="list-style-type: none"> • Extra Territorial Obligations (ETOs) • Maastricht Principles
Netherlands	<ul style="list-style-type: none"> • IMVO convenanten, Topsectoren beleid (internationale programmas van AgroFood & Horticulture), PSD instruments (RVO's DGGF, FDOV), Climate Smart Agriculture by Ministry of Economic Affairs