



Research Paper

# State Capture and Inequality

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## About the Author

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## About the Grand Challenge

Inequality and exclusion are among the most pressing political issues of our age. They are on the rise and the anger felt by citizens towards elites perceived to be out-of-touch constitutes a potent political force. Policymakers and the public are clamouring for a set of policy options that can arrest and reverse this trend. The Grand Challenge on Inequality and Exclusion seeks to identify practical and politically viable solutions to meet the targets on equitable and inclusive societies in the Sustainable Development Goals. Our goal is for national governments, intergovernmental bodies, multilateral organizations, and civil society groups to increase commitments and adopt solutions for equality and inclusion.

The Grand Challenge is an initiative of the Pathfinders, a multi-stakeholder partnership that brings together 36 member states, international organizations, civil society, and the private sector to accelerate delivery of the SDG targets for peace, justice and inclusion. Pathfinders is hosted at New York University's Center on International Cooperation.



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Pathfinders for Peaceful, Just and Inclusive Societies, State Capture and Inequality. (New York: Center on International Cooperation, 2021), available at <https://www.sdg16.plus/>

President Mahinda Rajapaksa participated at an election campaign rally in Ambalangoda, Jan. 6, 2015. Photo Credit: Flickr User Mahinda Rajapaksa. Retrieved from <https://www.flickr.com/photos/presidentrajapaksa/16185195316>, [\(CC BY-NC-2.0\)](https://creativecommons.org/licenses/by-nc/2.0/).



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# 1. Introduction

State capture is a type of systematic corruption whereby narrow interest groups take control of the institutions and processes that make public policy, excluding other parts of the public whose interests those institutions are supposed to serve. State capture is often associated with the first decade of transition in the former Soviet Union (FSU) and Eastern Europe. Hellman et al contrasted this form of improper influence over the *formation* of laws and policy with “administrative corruption,” which comprised improper influence over the *implementation* of laws and policy.<sup>1</sup> In transitional FSU and Eastern Europe, captors were often businesspeople who came to be known as oligarchs as their control over vast swathes of the economy grew. They purchased influence either through personal connections to the individuals and parties holding political power or by direct kickbacks, while the officeholders were in turn prepared to make secret deals to sell their influence over policy formation.

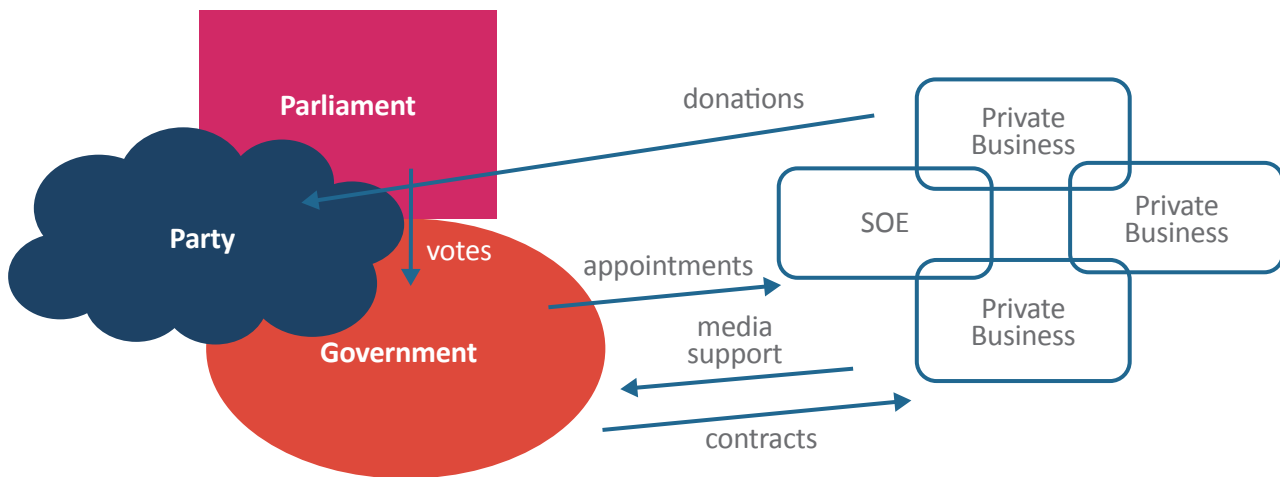
In Hellman et al’s formulation, state capture was driven by business interests, with the political sphere assumed to be vulnerable to such exploitation but not necessarily an active agent. It quickly became clear that the relationship between politics and business in transition states was more complex. In Russia, Wedel described the phenomenon of “institutional nomads,”<sup>2</sup> where individual actors moved strategically between public-sector and private-sector roles depending on where they could best access advantages. By surfing on the rules applying to different sectors, they effectively operated above and outside legal frameworks, able to influence these rules or make themselves immune by shifting their targets. This phenomenon has been exacerbated by globalization. The ability to transfer money rapidly around the globe has facilitated the emergence of “Moneyland,” wherein individuals can purchase impunity by moving between jurisdictions, avoiding tax or laundering their money by establishing companies in offshore secrecy havens, buying citizenship, and hiring expensive lawyers to help them find loopholes and dodge enforcement.<sup>3</sup>

State capture has also spread to many countries that had once seemed to be resilient democracies or, in the case of transition countries, on a secure path toward democratization. In its modern form, capture is often driven by political elites rather than business interests. In so-called “kleptocracies,” public officeholders abuse the power attached to their office to steal money and assets for themselves, but also to change the rules of the game in ways that consolidate and entrench their hold on power. Retaining power becomes a high-stakes game not just because they wish to retain access to opportunities for embezzlement: while in power, they also benefit from impunity. If ousted, they become far more exposed to the threat of law enforcement investigations or prosecutions. This is why leaders often explicitly change the rules to allow them to stay in office, as in Russia, Turkey, and China, or systematically dismantle democratic checks and balances, for example by undermining the independence of the judiciary and civil society, as in Hungary and Poland.

In present examples of global state capture, business and political elites exist in a relationship of codependency. Figure 1 shows how the boundaries between government and business are often blurred, and sometimes deliberately so. Political leaders in government use their control over parliament to shape laws, and their power to appoint loyal allies to state-owned enterprises and government agencies to grant access to state assets or award contracts to favored business allies. In return, these favored businesspeople—which may include organized crime groups—provide support of various kinds to the government or the governing party. This ranges from favorable media coverage to campaign finance donations, but could also include the use of violence to silence or intimidate political opposition, or the buying of votes from the electorate.



**Figure 1: A typical captor network**



**Highlights of the complexity of modern state capture networks include:**

- even in the exercise of its formal power, heavy reliance on outsourcing and public-private partnerships can mean that the state is not easy to distinguish from the private sector;
- there is not necessarily one ‘captor;’ and
- capture is not necessarily driven by actors outside the state.

However, the practices of capture involve those with formal state power (ab)using some of their functions to serve a narrow interest group and thereby buy loyalty that helps to keep them in power. In addition, as discussed further below, the captor group needs to disable any constraints on their power. Despite the complexity of capture in its modern form, the concept adds value to our analysis by emphasising:

- the intentional nature of elite actions to increase their grip on power;
- the mechanisms through which capture occurs; and
- the importance of independent institutions in building resilience against capture.

Where capture occurs in democracies, it is sometimes referred to as “democratic backsliding,” but this literature tends to identify the mechanisms of capture as outcomes; i.e., as symptoms demonstrating that a country has ceased to be on a path toward democratisation and is instead moving backwards. The concept of state capture encourages analysts to consider more deeply the drivers and intentions of those behind the decisions that lead to these outcomes. While there may be different degrees of intentionality and levels of coordination among these actors, understanding their roles and motivations seems to be important to being able to reverse the process of capture.

One of the most widely recognised cases of state capture relates to the collusive relationship between the Gupta family business group and former South African president Jacob Zuma. The Guptas started doing business in South Africa at the beginning of the country’s transition out of apartheid, first in IT before expanding into a number of other sectors including mining and defence, industries which typically lack transparency and involve close relationships with the government. A dependency relationship emerged under Zuma’s rule. Zuma allowed the Guptas to influence government appointments to the cabinet and key state-owned enterprises and agencies, thereby enabling the family to benefit from large state contracts. Zuma in turn sought their protection and support—e.g., through positive coverage from their television channel—to help him secure and maintain power, motivated partly by his own desperation to avoid a trial relating to allegations of bribery. In their case study on South Africa, Godinho and Hermanus describe state capture as:





... a political-economic project whereby public and private actors collude in establishing clandestine networks that cluster around state institutions in order to accumulate unchecked power, subverting the constitutional state and social contract by operating outside of the realm of public accountability.<sup>4</sup>

In other cases, separation between public and private sectors is even flimsier, with individuals simultaneously occupying public office roles and owning companies that benefit from public contracts. These political leaders capture the state not to benefit *allies* in an exchange transaction, but rather to facilitate their own embezzlement. They straddle the public and private sectors, owning shares in companies that win government contracts and using their access to key state resources to shape the economy to their benefit.

While state capture always involves cooperation and collusion among political and business interests, arguably the more that political leaders drive the process, the more 'efficiently' captor groups can seize control of the institutions that shape the rules of the game. In Malaysia, Prime Minister Najib Razak used his chairmanship of a sovereign wealth fund, 1Malaysia Development Berhad (1MDB), to embezzle money directly for himself and also allocate funds to his cronies.<sup>5</sup> In state capture, corrupt actors "cluster around parts of the state," focusing on those parts from which they can best extract funds and exert power.<sup>6</sup>

### Networks of capture in Brazil

The informal networks engaging in capture typically operate in a clandestine manner, making it difficult to analyse how they operate. Brazil, however, offers unusual insights into how these networks function because of the enormous evidence base revealed as part of its Lava Jato investigation. The use of plea agreements to incentivise individuals to share information about corrupt activities revealed a detailed picture of how machine politics worked in Brazil and many other Latin American countries over several decades.<sup>7</sup>

The Brazilian case centred around state-owned multinational petroleum company Petrobras and its relationship with a construction company, Odebrecht, which was embedded in an extensive informal network with members of the legislature (particularly the influential *Centrão* coalition) and the executive branch, including the presidency. In Brazil, owing to the high number of parties in parliament, presidents rely heavily on coalitions of parties for legislative support for their agenda. *Centrão* constitutes one such alliance and is almost always part of the governing coalition, thus commanding significant influence.

The Odebrecht case has revealed a classic case of machine politics, whereby the Brazilian president allowed *Centrão* to decide on appointments to key ministries, state agencies, and state-owned enterprises in return for the coalition's legislative support. This patronage power allowed *Centrão* to influence the decisions of these bodies so that they granted overpriced state contracts to Odebrecht. The construction company in turn paid kickbacks to the civil servants that made these decisions, and to the politicians and political parties in the *Centrão* coalition.

This case shows how close links between business and politics can create a narrow informal network that captures the distribution of public policy and state resources in a certain area. Recent research on the scandal has revealed how formal these informal networks actually were: Odebrecht's internal governance structure mirrored that of the government, with the CEO negotiating directly with the Brazilian president, while his subordinates maintained relationships with their equivalents in the government hierarchy.<sup>8</sup>

Odebrecht was not alone in having such links to politicians; corruption involved a host of other strategic economic actors, including in the telecommunications and banking sectors. Moreover, the same practices were used all over Latin America, with Odebrecht systematically paying bribes to government actors regardless of their ideological stance. The complexity of the scheme meant that *doleiros* (intermediaries) were also often involved to assist with the laundering of money.



## 2. Mechanisms and Impact of Capture

State capture has wide and long-lasting impact on economies, politics, and societies. Because it changes laws and institutions, it shapes the rules of the game for the rest of society. In political economy terms, this collusion between narrow political and economic groups leads to a skewed distribution of economic power, and leaves those few holders of economic power in a strong position to influence future political elites, consolidating their dominance in a self-perpetuating dynamic.<sup>9</sup> Yet there has been surprisingly little theoretical or empirical research to map out the effects of state capture on economies, politics, and societies. This paper elaborates on the mechanisms through which state capture impacts on societies, particularly its effect on social and economic inequality.

For Hellman et al, a defining feature of state capture was control over the formation of law and policy. This distinction highlighted the systematic nature of capture, as opposed to more ad hoc individual abuses characteristic of administrative corruption, as well as its long-term consequences. However, I argue that in many contemporary cases, elites have expanded the scope of state capture to two additional arenas:

- the *implementation of policy*, through organs of the state such as state-owned enterprises, the civil service, and quasi-independent regulatory bodies; and
- the *accountability ecosystem*, which comprises formal checks and balances such as the judiciary and the supreme audit institution, as well as the broader civil society space including the media.

This section outlines the mechanisms of capture in each of the three spheres (see also table 1). Note that not all mechanisms are utilized in each case that we observe around the world. Rather, this represents the strategic space in which captors typically operate, selecting targets according to the local context, its institutional vulnerabilities, and their own political and economic power.

### 2.1 Formation of Law and Policy: Shaping the Rules of the Game.

#### *Targets and mechanisms of capture*

In sphere one, the formation of law and policy, the key targets of capture are:

- **Elections:** getting into power and staying in power often depends on being able to influence elections, through outright vote-buying, companies making donations to parties or campaigns as part of ‘machine politics,’ and increasingly through manipulation of digital campaigns and social media.
- **The constitution:** re-writing the constitution to extend term limits, privilege certain groups, or weaken formal checks on power can increase the scope for subsequent unchecked abuse of power.
- **The military and police:** it is highly beneficial for captor elites to be able to control the state’s instruments of physical violence in order to suppress opposition.
- **Strategic economic assets:** by controlling key parts of the economy, particularly natural resources and utilities, corrupt elites gain rent-seeking opportunities and are able to use this control—particularly through state-owned enterprises—in various ways to channel more money out of the state, e.g. through privatization and procurement.
- **The legislature:** influencing the process of law making allows captors to shape the rules of the game for political and economic activity, providing opportunities to systematically advantage—or disadvantage—certain groups.

Changing the constitution is not straightforward. It often requires leaders to secure a two-thirds majority



of the legislature or to deploy and campaign in a referendum. The latter can be portrayed as a consultative exercise, although the legitimacy of such plebiscites is often undermined by a lack of free and fair voting, restrictions on campaigning by opposition forces, and government control over the media.

Gaining control over the military and police is also easier in some contexts than others, and more commonly forms part of state capture in lower-income countries. National security concerns are more widely exploited to justify authoritarian measures. Captors often use populist messages based on nationalist or post-colonialist ideology, or exaggerated threats of terror or crime, to make the case for such moves. In Hungary, Prime Minister Viktor Orbán has created a whole narrative which frames the EU, certain universities, media, and civil society groups as enemies wanting to impose ‘unnatural’ liberal values on the Hungarian people. In South Africa, Zuma often used the language of Black Empowerment as a cover for corruption that served his own private interests and those of the Guptas.<sup>10</sup>

In some countries, power over strategically important economic assets is key because economic activity is so concentrated in certain economic sectors that control over them grants a license to shape the rules of the game for the rest of the economy. Capture of natural resources has been widely recognized as a target for corrupt elites. Extensive literature focuses on the resource curse, which shows how extractive industries can be used to embezzle funds and build up a power base resulting in the public seeing very little benefit from their country’s rich endowment. Equally strategic is the capture of utilities on which the economy and society rely, and also capture of the banking system, the engine of the economy which, through decisions about how to dispense credit, can expand or constrain the power of individuals and groups. Control over these spheres brings enormous power to extort, or to allocate advantage to narrow interests in exchange for political support.

Capturing a legislature is a high-impact way of influencing policy formation: laws remain in place for a long time and shape the context in which everyone acts. If a law can be manipulated to advantage a particular group, then that advantage gets baked in to the system, making it harder for other groups to gain power. These different aspects are interlinked: for example, capture of the legislature is often facilitated by rules around party and campaign finance. The ability to donate money to a political party or candidate without it being traced facilitates the buying of influence over laws and regulatory frameworks.

Similarly, weakly regulated lobbying creates opportunities for narrow interest groups to have undue influence over policy formation. Laurence Lessig has argued that campaign finance and lobbying rules in the United States are so weak that they have undermined Congress’s ability to carry out its legitimate purpose, leading to a situation that he terms “institutional corruption”.<sup>11</sup> In other situations, political elites exploit loopholes in parliamentary procedure to rush through laws without sufficient scrutiny, undermining the key role of parliament as a check on executive power.

## 2.2 Implementation: Influencing Administrative Decisions.

### *Targets and mechanisms of capture*

For captors, influencing the implementation of public policy is the main way of ensuring that state funds are allocated to their preferred recipients. The key targets of capture here are:

- **Budgets:** the practice of earmarking funds for particular ministries or projects where the captor group has influence is known as “budgeted corruption”.<sup>12</sup>
- **Appointments:** the power of patronage—to hire and fire—over key public appointments can be abused to remove critics or dissenters and replace them with allies who are loyal to the captor and live in fear of losing their role.
- **Government contracts:** influencing the award of public procurement contracts, e.g., through





requiring certain advisers to be used, appointing allies to evaluation committees, or directly influencing procurement officers, is a key method of channelling money out of the state to informal networks.

- **Regulatory decisions:** influence over regulatory decisions can ensure that critics are disadvantaged and allies favoured.

In this sphere, captor networks often rely heavily on patronage power to install loyal allies in key decision-making roles, thereby allowing them to maintain influence over a series of decisions in the future. If the appointed allies seek to behave independently, patronage power allows the elites to fire them from these positions; but the threat of this is usually sufficient to ensure loyalty. Indeed, where patronage works efficiently, elites do not need to directly persuade their appointees to make the ‘right’ decisions in their work; rather, the appointees anticipate the needs of their patrons and shape policy implementation accordingly, making it harder for anyone to evidence improper influence.

## 2.3 Accountability Ecosystem: Disabling Checks on Power.

### *Targets and mechanisms*

Healthy political systems distribute power among a range of state institutions so that they can hold one another to account, gathering evidence about any alleged abuses of power or breaching of sanctions. In addition, a complex ecosystem of nonstate actors in civil society and the media play an important role in checking that power is exercised legitimately. They can also expose wrongdoing to inform the wider population. As such, these institutions and organizations pose a threat to captor networks. Elites therefore seek to undermine the power of key actors in the accountability ecosystem:

- **Judiciary:** an independent judiciary poses a threat to captor networks as a fundamental check on executive and legislative power, adjudicating on legal disputes and enacting judicial review of government decisions. The executive branch may therefore seek to weaken the autonomy of the judiciary in a number of ways, including by underfunding the judicial system; changing rules for appointing judges to allow the replacement of independent judges with political allies; seeking to control the system for disciplining judges; and changing the way that cases are allocated to ensure that sensitive cases receive friendly adjudication.
- **Law enforcement and prosecution:** appointments to leadership roles in law enforcement and public prosecution can be used to install allies who will ‘bury’ investigations and thereby grant members of the captor group effective impunity.
- **Supreme Audit Institution:** audit institutions are often a key source of accountability, with the powers and expertise to check on how government policy has been implemented, and carry out public procurement processes. They can be undermined through cutting their budget to limit their capacity to scrutinize government conduct, and by the use of patronage power to replace independent leaders with political allies. In some cases, captor networks suppress the reports of audit institutions and prevent them reaching the public or parliament.
- **Media:** a free media represents a major threat to a captor network because of its ability to uncover corruption and inform the public, triggering electoral accountability. Controlling the media is thus a priority for most captor groups. Tactics include manipulating the conditions for broadcast frequencies or licenses to exclude critical media, or investing heavily in creating new media that propagate positive stories about the governing elite. They may also intimidate journalists who criticize the government or withdraw government advertising revenue, removing a key funding source for media outlets that do not toe the government line.
- **Civil society organizations (CSOs):** another key actor performing a watchdog role over government



is civil society. These organizations often have considerable technical expertise and are able to compile and communicate evidence about corrupt practices. Governments can clamp down on CSOs by changing the laws that allow them to access funding (e.g., by banning foreign donations), making the rules for their registration restrictive and burdensome, and seeking to smear their reputations or undermine their reports.

- **Academia:** Some captor networks seek to purge academics that criticize the government, defunding universities that do not support the government line or explicitly firing academics.

## Clamping down on civil society in Sri Lanka

In Sri Lanka, a country that emerged from a 26-year civil war only in 2009, the state is currently being captured by one family, the Rajapaksas. Gotabaya Rajapaksa was elected president in late 2019 and has since appointed three of his brothers to key roles including prime minister, finance minister, minister of irrigation, state minister for disaster management, and state minister for home affairs. His nephew runs another two ministries, meaning that one family directly controls at least 24 per cent of the state budget.<sup>13</sup>

In an explicit move to weaken a potential check on its conduct, the Rajapaksa government in October 2020 used its two-thirds parliamentary majority to push through a major amendment to the constitution which removed the constitutional status of Sri Lanka's anti-corruption agency, the Bribery Commission, and took away its power to initiate investigations. The amendment also abolished two other important regulators: the national procurement commission and the audit service commission.

The current Sri Lankan government frequently abuses its power over the parliamentary timetable to minimise scrutiny of new laws, and the Rajapaksas have also appointed allies to leadership roles in state-owned enterprises. As a military man, Rajapaksa has given out many high-ranking government jobs to former military personnel, including the head of the COVID-19 taskforce and the minister of public security.

Perhaps most alarming is the Rajapaksa government's clampdown on civil society. One lawyer who criticised the Prevention of Terrorism Act has been held in custody since April 2020, while another activist was abducted from his house and allegedly assaulted before being released on bail. Others who have merely written critical comments on Facebook have been arrested and detained for months. CSOs receive unannounced visits from military intelligence, and are required to inform the administration before applying for grants.

The freedom of the press is also threatened by close links between the Rajapaksas and media industry owners. The president recently pardoned convicted murderer Duminda Silva, for example, whose brother owns a major television and radio empire. The owner of another large media group is believed to have played a key role in the Rajapaksa's successful presidential campaign. Since Sri Lanka has no rules on party finance, there is nothing to stop machine politics.



The three spheres of capture and the specific mechanisms of influence within them are set out in Table 1, along with examples of their impacts on the economy, politics, and society. These mechanisms can be viewed as akin to “modules:” they can be utilized independently of one another and in varying configurations, but essentially the more of these areas that are captured, the stronger the captor’s power and the harder it is to dislodge them.

Depending on the country, capture may be pursued more actively in one sphere than another, and in some cases capture in one sphere may precede and lay the groundwork for capture in another. Different institutional setups create different vulnerabilities to capture, while different captors use distinct strategies. Governments attaining a two-thirds majority in parliament often launch major constitutional reforms early in their terms, for example, to capitalize on the strong hand this gives them to shape the rules of the game. In the cases of Hungary and Sri Lanka, when the Orbán and Rajapaksa regimes respectively returned to power following a period in opposition, they used their strength in parliament to immediately undertake wide-ranging constitutional reforms that entrenched their power and weakened checks and balances. In subsequent periods, Orbán was able to benefit from the way that these changes expanded and entrenched his power.

In more advanced democracies, captor groups may focus on weakening the constraints on their power in the first instance. In the UK, the Johnson government has sought to undermine the judiciary in several ways since coming to power in 2019. It has openly questioned the impartiality of judges, called for political oversight of judicial appointments, sought to weaken judicial review of executive decisions, and in October 2021 announced plans for a new mechanism that would allow it to “correct” court judgements that ministers believe are incorrect. In addition, it has sought to undermine key regulators which check its power, for example by introducing legislation that would remove the Electoral Commission’s power to prosecute those who break election rules; refusing to act on advice from the independent advisor on ministerial interests when a minister was found to breach the ministerial code; and seeking to replace the process for investigating allegations of misconduct by MPs following the Standards Committee’s proposed sanction on one of its former ministers for egregious breaches of rules on paid advocacy. The Johnson administration also ignored the advice of the House of Lords appointments commission when it recommended against conferring a peerage on Conservative Party donor Peter Cruddas. It did so again when its preferred candidate to head the media regulator, Ofcom, was deemed unappointable by the interview panel, changing the job description for the role and appointing a new recruitment committee that allowed the same candidate to reapply.

**Table 1: Mechanisms and Impact of State Capture**

Arena of capture and objective	Mechanisms	Impacts
<p><b>1. Formation of constitution/law/policy</b></p> <p><b>Secure control over the means of violence, shape the rules of the game as they apply to politics and key economic sectors</b></p>	<ul style="list-style-type: none"> <li>• Ensure political control over military and police</li> <li>• Shape laws governing state-owned enterprises in key economic sectors (e.g., natural resources, banking and finance, utilities) in ways that retain extensive political control</li> <li>• Change constitution to extend term limits</li> <li>• Limit parliamentary scrutiny of law</li> <li>• Set rules of privatization and public procurement to ensure high discretion at implementation stage</li> <li>• Shape campaign finance laws to allow anonymous donations</li> <li>• Block efforts to establish whistleblower protection</li> </ul>	<ul style="list-style-type: none"> <li>• Undermines rule of law, as military and police focus on keeping elite in power</li> <li>• Economic development is skewed toward sectors that the elite can control, reducing opportunities for other sectors and creating unnecessary dependence on commodities that are prone to instability</li> <li>• State assets are allocated to narrow groups, thereby entrenching unequal distribution of economic power</li> <li>• Opposition groups find it difficult to raise money and challenge government</li> <li>• Individuals discouraged from exposing misconduct for fear of retribution</li> </ul>
<p><b>2. Implementation of policy by government bodies/civil service</b></p> <p><b>Influence administrative procedures to benefit captor network and disadvantage opponents</b></p>	<ul style="list-style-type: none"> <li>• Appoint allies to key decision-making roles in state-owned enterprises, the civil service, and regulatory bodies</li> <li>• Influence privatization process to allow allies to purchase key state assets at low prices or with government-backed finance</li> <li>• Influence public procurement to allocate contracts to allies</li> <li>• Influence industrial policy or grant allocation to distribute resources to loyal areas</li> </ul>	<ul style="list-style-type: none"> <li>• State assets, public money, and services are distributed to favored groups</li> <li>• The majority of society, and especially already-disadvantaged ethnic, religious, or indigenous groups, become poorer and worse off</li> <li>• Companies without political connections cannot win government contracts and go out of business, undermining economic development</li> <li>• Some parts of the country become prosperous while others suffer</li> <li>• In terms of politics, the system creates incentives to be loyal to the leadership and not challenge its power</li> <li>• Individuals perceive that social and economic success depends not on merit but on connections. More skilled individuals leave the country in search of merit-based opportunities, leading to brain drain, damaging economic development and weakening political opposition even further</li> </ul>
<p><b>3. Accountability institutions, e.g., supreme audit institution, civil society, the media</b></p> <p><b>Disable and undermine institutions, organizations, and individuals that reveal corruption or seek to hold power to account</b></p>	<ul style="list-style-type: none"> <li>• Reform judicial appointments to allow replacement of independent judges with political allies</li> <li>• Replace key law enforcement leaders with allies</li> <li>• Dismiss prosecutors or attorneys general who challenge incumbent elite</li> <li>• Reduce budget of supreme audit institution, appoint allies to senior leadership, repress reports</li> <li>• Control access to broadcast licenses</li> <li>• Intimidate journalists who criticize government</li> <li>• Fire academics who criticize government, defund universities</li> </ul>	<ul style="list-style-type: none"> <li>• Undermines rule of law by politicizing judicial decisions</li> <li>• Undermines rule of law by diverting law enforcement and prosecutors from investigating or prosecuting certain kinds of wrongdoing</li> <li>• Reduces ability of audit institution, civil society, and the media to reveal irregularities and seek improvements, leading to worsening performance of public administration and poorer public service provision; likely to affect already-disadvantaged groups more severely</li> <li>• Undermines higher education, leading to less skilled workforce</li> </ul>



## 3. Impact on Inequality

State capture is a process by which narrow interest groups gain control over the distribution of state assets and resources. It therefore fosters inequality by:

- shaping law making and policy implementation to benefit those who already occupy the most powerful positions; and
- neutralizing institutions and organizations that are intended to act as checks on that power and act as the voice of less powerful groups in society.

State capture undermines the social contract by subverting the state's purpose of serving the public interest. It can be contrasted with a pluralist democracy, in which all interest groups have a voice—a chance to influence policy—while the institutions of the state are obliged to consult widely and take account of varied interests.

Societies can be stratified along two dimensions. Vertically, social groups are defined according to indicators of wealth, income, and class; horizontally, groups are defined based on identities, usually with an ethnic, tribal, or linguistic base. Inequality can occur in both dimensions, and in practice they often overlap so that certain ethnic groups tend to be at the bottom of the hierarchy, exacerbating differences in political power and socioeconomic outcomes.

State capture worsens inequality in many ways. However, it is difficult to measure the precise impact of state capture on inequality, because capture often occurs in incremental steps and takes slightly different forms in different countries. Moreover, there are no reliable cross-country measures of wealth inequality. Wealthy individuals have many channels through which they can hide their assets, meaning that wealth and income tend to be underreported. However, case studies can shed light on the dynamics of state capture and provide examples of how to prevent the slide into capture and how to climb out.

### 3.1 The Impact of Capture on the Distribution of Power

**Capture of the formation of policy fundamentally alters the balance of power in society:**

- In terms of *national and individual security*, the abuse of the military and police to keep the elite in power means that they cease to protect society as a whole—and, usually, minority groups in particular. Where kleptocrats use the military (or threaten to do so) as an instrument of their corruption, state capture can become violent and enable severe repression of the population. In recent years, even countries that were once advanced on the path toward democratization have seen the return of close links between the military and the political leadership. President Jair Bolsonaro of Brazil, for example, has appointed a number of former military leaders to key government positions, as have the Rajapaksas in Sri Lanka.
- In terms of *economic power*, the allocation of state assets to narrow groups exacerbates an unequal distribution of economic power. Congruently, economic development becomes skewed toward sectors that the elite can control, reducing opportunities for companies in other sectors. Over time, the economy may become unnecessarily dependent on commodities, which are prone to instability. In the case of banking sector capture, collapse of the financial system becomes inevitable as banks face unperforming loans. Ordinary people are also unable to access credit that might allow them to start enterprises or invest in education enabling them to escape poverty.





- In terms of *political power*, opposition groups find it difficult to raise money and challenge the government. The undermining of political competition means that even if elections are held, the opposition is at a disadvantage. Over time it may become more difficult to recruit skilled people into opposition politics because the chances of success are slim. Ultimately, individuals entering politics become more likely to be motivated by personal greed rather than serving the public interest. Moreover, because the life chances of the population depend so much on connections rather than merit, many of the best educated and younger people become disillusioned and “vote with their feet,” leaving the country to look for better opportunities elsewhere. In many cases these diaspora groups face barriers to voting in elections, further weakening the chances of opposition parties.<sup>14</sup>

## 3.2 The Impact of Capture on Economic Development

**The capture of the implementation of public policy undermines economic development and potential.**

- When the public procurement process is captured, suppliers with the right connections are favored while those that lack links to the captor network fail to win contracts. Over time, some of the unconnected companies go bankrupt, meaning that there is even less competition in certain sectors, and further concentrating wealth in the hands of the group that wins corrupt contracts. Without competition, the remaining companies may be even less inclined to provide quality products and services, meaning that the public gets poor value for the money spent through public procurement. Often contracts are not fulfilled at all, or the goods and services provided are unsafe, inadequate, or flawed.
- Where government jobs are distributed on the basis of cronyistic connections, the appointed “clients” start to make and implement policy in ways that benefit themselves and their patrons, to the detriment of others. Extensive use of patronage powers creates a large group of people who are dependent on the state and the dominant elite, and thus interested in keeping them in power. Public-sector employment can therefore become a way of buying votes, leading to a very bloated public sector.<sup>15</sup> Meanwhile, the lack of meritocracy in recruitment will discourage many intelligent people who lack political connections from joining the civil service, eroding its capacity over time. More skilled individuals are likely even to leave the country in search of merit-based opportunities,<sup>16</sup> leading to brain drain, damaging economic development, and weakening political opposition further.
- Where state services and support are distributed mainly to narrow interest groups, the majority of society—and especially already-disadvantaged ethnic, religious, or indigenous groups—become poorer and worse off. Some parts of the country may become prosperous while others are punished for supporting the opposition, creating further incentives to demonstrate loyalty to the leadership and refrain from challenging its power.

Hellmann suggests that the effect of capture on economic development depends partly on sequencing. In countries where the “political marketplace” became concentrated before universal suffrage was introduced, he argues, less harmful types of corruption occur than in countries where mass voting rights were introduced while political competition was more fragmented and chaotic.<sup>17</sup> Certainly, capture often seems to emerge in countries undergoing double (i.e., political and economic) transitions, whether from colonialism or communism.



### 3.3 The Impact of Capture on the Rights of Minorities

The disabling of accountability institutions often removes the voice of minority groups and disempowers the most disadvantaged.

- By politicizing judicial decisions and the way that the law is enforced, state capture undermines the rule of law. Judicial institutions come to be used as political weapons by the captor elites, leaving ordinary people with little access to justice or redress, hitting underrepresented minorities particularly hard.
- By reducing the ability of the supreme audit institution, civil society, and the media to reveal irregularities and seek improvements, capture tends to worsen the performance of the public administration and erode public service provision. This affects already-disadvantaged groups more severely since they are more reliant on public services.
- Crackdowns on university autonomy and critical thinking undermine higher education, leading to a less skilled workforce and lack of investment in key disciplines.

State capture and inequality reinforce one another. Preexisting inequality makes capture more likely: in societies where power is distributed unequally, it is easier for narrow interest groups to seize power as well as hold on to it and expand their sphere of influence. Where power is more equally distributed, fairer competition among interest groups forces them to build coalitions. This is likely to lead to better policies that benefit a wider share of society.

### 3.4 Long-Term Impact on Society

Societies characterized by state capture are likely to exhibit three important sociological consequences over time that exacerbate inequality, inhibit individual life chances, and make it harder to exit capture.

#### ***Brain drain***

State capture wholly undermines the principle that an individual can improve their social standing through merit, hard work, or talent. In captured states, resources are distributed according to political alliances, with little space for individuals to improve their standing through hard work or studying. This kind of corruption often leads to “brain drain:” the most intelligent and able individuals seek merit-based advancement abroad, stifling domestic innovation.<sup>18</sup> Just as the resource curse damages economies by creating the impression that it is only worth investing in oil, state capture can lead to a kind of *social* resource curse whereby individuals seek to gain status only through building alliances with those in power, seeing little value in education. Moreover, in time, traditional nonmonetary symbols of status may lose their value, further reifying wealth and glamour as objects of aspiration.

#### ***Stratification***

State capture intensifies stratification in societies because captor groups give advantages to clearly defined groups of allies—often according to identities associated with kin, tribe, ethnicity, or regional identity. In stratified societies, it is difficult for individuals to be socially mobile because these identities are largely externally imposed and difficult to change. Moreover, societies become more polarized because they cannot trust the state to provide for them; hence, individuals become more reliant on their social networks as a coping strategy. This in turn undermines efforts to build state capacity and legitimacy.



**Elite delineation**

The elites in captive states often become highly delineated and separate from the public. Their lived experience may be entirely different to that of ordinary people, meaning that they are increasingly out of touch and unable to anticipate the impact of public policies. In addition, it becomes very difficult for outsiders to join the elite unless they are born into it or, in rare circumstances, are invited in as trusted allies, meaning that there is very little social mobility.

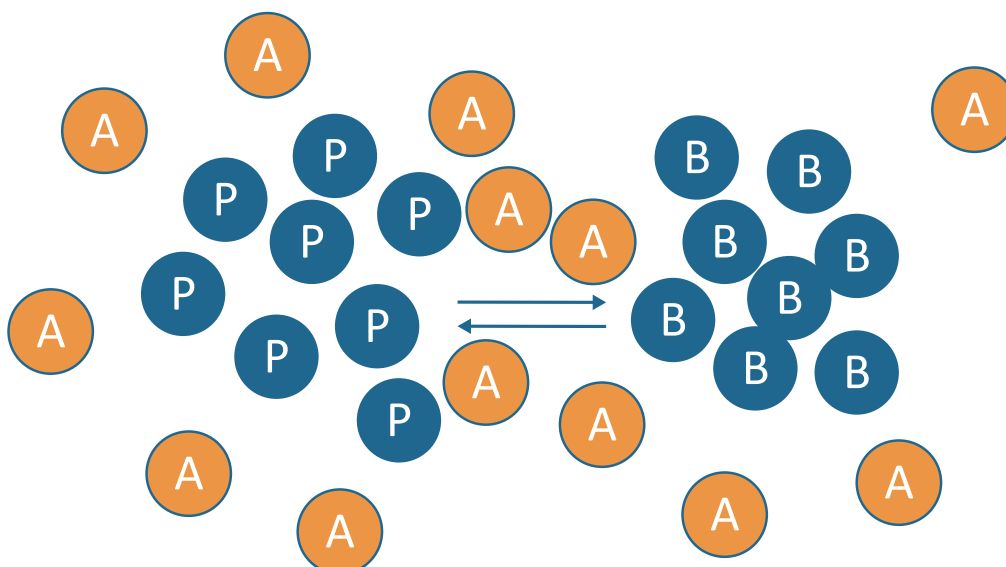
**3.5 Preventing State Capture**

State capture occurs when informal networks spanning the public and private sector abuse state resources to benefit themselves and subvert the state’s duty to serve the public interest. In an ideal world, we want public officeholders (let’s call them Ps)—both politicians who shape public policy and the public officials who implement it—to be motivated by serving the public interest. Businesspeople (Bs), on the other hand, who engage in economic activity—buying, selling, making things, and employing others—are motivated largely by profit, although they may also recognise responsibilities to society more broadly.

Ps have the power to shape the rules of the game under which Bs operate, so it is inevitable that Bs will seek to influence Ps. In democratic systems we try to limit the extent to which Bs can further their own interests, and seek to ensure that Ps make policy in ways that reflect the wider concerns of the general public. In so doing, democracies are helped by a third type of actor, whose purpose is to hold power to account. Let’s call them As, for accountability. They include institutions like the judiciary and the state audit institution, and independent regulators on the conduct of those in public life; they might be enshrined in the constitution and receive funding from the state, but their function is to keep power in check and act as an independent arbiter. In addition, some As are outside the state, such as civil society organizations and journalists. The As mainly monitor the behavior of Ps to keep them on track with serving the public interest, but they may also watch for signs that Bs are abusing the power entrusted to them by virtue of their being powerful actors in our economies and societies.

Corruption is best controlled by keeping these three types of actors in equilibrium, as shown in Figure 2 below. The Ps and Bs are separate, although they interact with each other to ensure that Ps make public policy in ways that allow Bs to prosper. The As can be seen all around, observing the behaviour of Ps in particular and Bs to a lesser extent, and monitoring the relationships between Ps and Bs.

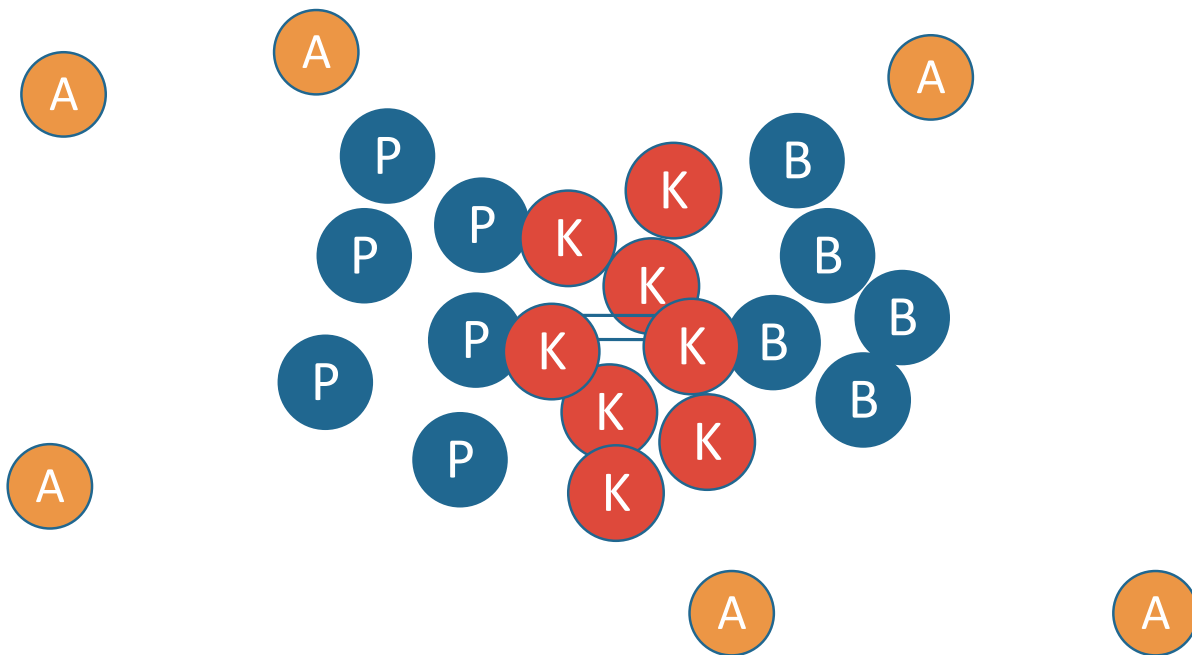
**Figure 2: A state where Ps and Bs are in balance, and held to account by As**





In state capture, by contrast, some of the Ps and Bs cease to be separate; instead, they become Ks, or kleptocrats, as in Figure 3. Ks straddle the political and business arenas, abusing their entrusted and de facto power using the mechanisms outlined in table 1. Their aim is to shape the rules of the game in ways that serve themselves and influence the way that policies are implemented to their own advantage. Ks also seek to constrain, undermine, or even crush As that might expose their behavior or stand in their way. If they succeed, As get pushed to the side and lose their ability to monitor the state and its relationships with business.

**Figure 3: A captured state, where kleptocrats have merged politics and business**



Trade unions are another potentially important actor in maintaining a balance between Ps and Bs. In some circumstances, trade unions provide a counterweight to captor elites and help to maintain equilibrium among the other key actors. For example, in Chile, the Pinochet regime used its access to state resources—particularly state-owned enterprises—to build up an economy dominated by a small number of powerful families,<sup>19</sup> simultaneously wiping out trade unions. In Chile’s post-dictatorship transition, these business families have been able to lobby for favorable regulatory frameworks, unconstrained by opposition from unions. In neighboring Uruguay, trade unions remained strong and have over the years provided sustained pressure on leaders to execute a more distributive economic policy. While Chile has the most severe inequality in the Latin American region, the distribution of wealth in Uruguay is relatively equal.

**To prevent state capture, the core principles must be:**

- Keep politics and business separate and balanced in terms of power
- Protect the space, independence, and resources of oversight institutions

Below, these objectives are translated into ten recommendations to guide international organizations providing technical assistance, reformists in national governments seeking to build resilient institutions, and civil society organizations monitoring the activities of those in power.





### 3.5.1 Keep Politics and Business Separate

**GOVERNANCE OF STATE-OWNED ENTERPRISES:** One of the key targets of capture is state-owned enterprises, particularly those in strategic sectors such as natural resources and utilities. Influence over these companies can allow for significant control over the economy and major channels of public spending, but they are often less regulated than other parts of the government or the private sector. For example, procurement by state-owned enterprises often falls outside public procurement laws and is therefore not subject to the same conditions regarding competition requirements and transparency. This is an area where international organizations may be able to exert leverage to ensure that state-owned enterprises are well-governed and not subject to politicization.

*Recommendations: Ensure open and competitive recruitment into key roles in state-owned enterprises. Ensure that public procurement laws apply to their spending. Provide for regular and extensive oversight by the supreme audit institution, reporting to parliament and publishing reports.*

**PRIVATIZATION:** Certain phases of development or types of policy create particular opportunities for capture, and privatization is a key policy that can radically redistribute economic power. Privatization linked to transition or regime change often occurs in a context where checks and balances on government power are only weakly developed, the market value of many assets is unclear, and there is limited demand to purchase companies. As such, the privatization process can become a major target for capture, leading to the creation of powerful oligarchs who amass control over large sections of the economy in a very short time. Post-Soviet Russia is the archetypal case, but as privatization was pursued in other parts of the world—particularly Latin America—it was similarly accompanied by active efforts to capture the process.

*Recommendations: Undertake privatization slowly and in ways that seek to distribute assets among a relatively wide network. Mass privatization through vouchers typically does not work, because it is too easy for tycoons to buy up packages of vouchers and thereby gain ownership of companies via the back door. Similarly, attracting foreign direct investment is unviable for less attractive assets. With privatization, domestic actors who are already endowed with economic power will likely be best able to acquire these state assets, but more care could be taken to ensure that buyers are truly capable of providing the necessary capital and running the companies once purchased. Greater transparency and oversight can help to avoid cronyism in the distribution of these key economic assets.*

**FOREIGN INVESTMENT:** A key driver of economic development can be foreign direct investment (FDI). However, there is increasing evidence that the source of FDI is as important as the volume. Attracting FDI from multinational companies operating according to high standards of integrity is quite different from attracting FDI from companies that are actively seeking loose regulatory regimes in order to avoid compliance with rules around human rights, environmental responsibility, or corruption. Moreover, investment from authoritarian regimes—sometimes via sovereign wealth funds or state-owned enterprises—is increasingly recognized to be a risk factor for state capture, not least because it is often negotiated through opaque government-to-government agreements which bypass a country's normal legal requirements. Some authoritarian regimes even leverage investment from ostensibly private companies in their countries to undermine democratic institutions.<sup>20</sup>

*Recommendations: Set up a transparent framework for foreign investment that is accountable to stakeholders and requires investments to be justified according to market principles. Introduce and enforce strong local antibribery laws for state employees to help ensure that business is conducted according to international norms and in ways that support ethics and integrity in business environments.*





**CIVIL SERVICE:** As the implementer of government policy, the bureaucracy can be vulnerable to capture as corrupt networks seek to ensure that they can improperly influence decision making in the public administration. The civil service can be manipulated through use of patronage power to appoint loyal allies to key positions. The same power can use the threat of firing individuals to ensure that they do not become more autonomous; appointments to “acting” roles are particularly easy to control in this way. By contrast, a civil service comprising experts and with sufficient autonomy and confidence to challenge the executive can contribute to more inclusive and competent policymaking.

*Recommendations: Ensure meritocracy in recruitment to and promotions within the civil service. Vet staff before appointing and require all staff above a certain level to disclose their assets and any conflicts of interest. Verify these disclosures, e.g., by comparing them with tax returns.*

**CONFLICTS OF INTEREST:** State capture flourishes in situations where business and politics can easily merge and argue that there are legitimate reasons for them to do so. As such, extensive state outsourcing of the provision of public services blurs the boundaries between government and business, creating more opportunities and incentives for business to influence politics. Disclosure of assets and transparency about company ownership can also reveal the distribution of economic power in society and may help to dismantle oligarchic structures that have been built up through past episodes of state capture. Similarly, transparency in lobbying can help to insulate policymaking from excessive influence by narrow interest groups.

*Recommendations: Reduce the ability of politics and business to become merged through tough regimes for disclosing and regulating conflicts of interest, including public registries of company ownership, and public asset disclosures for politicians and civil servants.*

### Greater transparency about conflicts of interest in Ukraine

In June 2021, Ukraine introduced a new bill in its parliament which would formally register influential business persons as “oligarchs” if they are found by the president’s national security council to hold significant influence through ownership of media, business monopolies, the financing of political parties, or by directly holding a government position. These individuals would then be required to submit exhaustive asset declarations, report all contact with government officials, and be forbidden from taking part in privatizations.

**PUBLIC PROCUREMENT:** Other than privatization, which is often pursued early in a transition phase, the main way to channel funds out of the state is through public procurement, or the award of government contracts—a major opportunity for capture. Public procurement accounts for on average 30 per cent of public spending in OECD countries, rising to as much as 50 per cent in lower-income countries. Not all corruption in public procurement is state capture. On the buyer side (i.e., government agencies procuring goods, works and services), individual officeholders sometimes manipulate the process to steer contracts to favoured bidders in return for kickbacks or other favors. On the supplier side (i.e., companies bidding for contracts), companies may form cartels that construct a facade of competition while in reality agreeing among themselves to share out contracts.

The procurement process can also be captured, as when individuals in government use their patronage power or other forms of influence to incentivise or coerce procurement officials to design and execute the procurement process in ways that favor their networks. This can be difficult to detect and to distinguish from incompetence or lack of capacity; however, the increasing use of big data analytics to identify corruption risk indicators facilitates the identification of patterns of corruption.<sup>21</sup> In Hungary, such research suggests that around 50-60 per cent of central government procurement is allocated through partisan favoritism.<sup>22</sup>



In some cases, the rules of donors or lenders (e.g., the IMF and World Bank) or a club (e.g., EU) can constrain the elite's options to manipulate procurement. However, this may also encourage captor elites to maximise control over less-regulated arenas, displacing corruption more than constraining it.<sup>23</sup> For example, in Hungary, the Orbán government's ability to shape the public procurement law was constrained somewhat by EU membership, which may explain why the regime's manipulation of procurement focused more on mechanisms in the implementation phase and on disabling accountability institutions.<sup>24</sup>

*Recommendations: Make the procurement process highly transparent, publishing data about every aspect of the process—including the procedure type, number of bidders, and advertisement period—to allow identification of “red flags” or corruption risk indicators. Train public procurement officials to ensure that they have the expertise to carry out the procedures competently. Ensure that those appointed to evaluation committees do not have conflicts of interest.*

### ***Reforming procurement to overcome machine politics in Canada***

In 2011, the Quebec government launched an inquiry into corruption in the province's construction industry, following mounting pressure after a Radio Canada investigation revealed widespread abuses of power. Municipal governments had been awarding contracts to construction companies which, in turn, illegally financed political parties. The construction companies colluded to increase the base price of contracts, and also bribed contracting authorities to favor some projects over others, permit lucrative contract modifications, or influence members of the selection committee. The inquiry, known as the Charbonneau commission, heard testimony from more than 250 witnesses. It also recommended a number of reforms, including the creation of an independent authority to oversee public contracts, better protection for whistleblowers, and increased penalties for construction companies that break the law, including cancelling their licence to operate.

**POLITICAL PARTY FINANCE:** The role of party and campaign finance in state capture varies considerably depending on context. Where elections are highly competitive, campaigning may become very expensive. The temptation to accept large corporate and/or anonymous donations increases, and politicians may be tempted to form informal alliances with businesspeople.

Research on forty-five parties across nine countries suggests that parties that are more heavily reliant on private donations are also more likely to hold extremist positions.<sup>25</sup> Indeed, in some countries the high cost of campaigning creates a bias such that those lacking considerable individual wealth are deterred even from running for office. Candidates may also be forced to take out loans to finance their campaigns, meaning that they enter office with obligations to raise money—and pressure to abuse state resources to do so— in order to repay debts. In countries where one party has been in control for many years, abuse of administrative resources for political campaigning is even more likely to be a problem due to the lack of separation between state and party.

Money in politics is a global problem because shell companies can be used to finance political party donations, making them untraceable and undermining transparency rules.<sup>26</sup> The rise of digital campaigning and use of social media has also made it much more difficult to trace the source of campaign funds and to regulate spending.<sup>27</sup>

Regulation of party finance typically seeks to limit—or at least make transparent—the money flowing in to parties. Some countries have sought to cap spending, but such constraints can also be abused by authoritarian regimes to undermine political opponents.<sup>28</sup> Moreover, such rules are rarely effectively



enforced. For example, Nigeria capped spending in 2010 but the period since then has seen constant infringements which the Independent National Election Commission does not investigate. In 2015, Nigeria's People's Democratic Party was estimated to have spent almost NGN 9 billion (approximately USD 3.5 million): eight times more than the total election limit for presidential candidates.<sup>29</sup>

An alternative approach is to provide state funding for parties or reduce their costs by providing free airtime on television and radio. However, this can also be problematic in that it tends to advantage parties that are already successful, entrenching inequality.<sup>30</sup> Germany is often regarded as an example of good practice because it incentivizes the raising of many small donations by providing matching state funding for private donations—but only those below a certain value threshold.

*Recommendations: Reforming party finance is extremely difficult. Efforts to reform the system must first undertake careful analysis of the local context, understand how elections are currently fought and won, and seek to design interventions that address the underlying power dynamics but are also realistic and enforceable. However, reforms that are likely to be helpful include limits on donations from one source. This requires disclosing the names of large donors, banning anonymous donations or donations from companies with anonymous owners, and providing free airtime to parties. Moreover, rules relating to fair decision making in public policy that require public consultations and publishing details of meetings with lobbyists can help to ensure that donations cannot easily buy influence.*

### 3.5.2 Protect the Space, Independence, and Resources of Accountability Institutions

**INDEPENDENCE OF THE JUDICIARY:** The judiciary plays a critical role as a check on the executive, able to review government decisions and annul them where due process has not been followed. It also upholds the rule of law by making fair decisions in trials and ensuring that all are treated equally before the law. This can help stop individuals or interest groups acting as if they are above the law, and also prevent minorities having their rights breached. The independence of the judiciary can be threatened in several ways. For example, in Hungary and Poland, new rules on appointments have been used to stuff the highest courts with political appointees. Poland also sought to establish a new disciplinary chamber for judges which threatened to encroach on their independence, while Hungary changed case allocation rules so that certain cases can be put before particular judges.

*Recommendations: Protect the independence of appointments to the judiciary and the fairness of procedures for appointments, advancement, and dismissal. Ensure that courts are well-resourced so that delays cannot be used to thwart justice.*

**FREEDOM OF THE MEDIA:** In situations of state capture, the media plays a critical role in exposing corruption and providing evidence. In recent years, investigative journalism has adapted to a new model, often operating more like a civil society organization. They are increasingly dependent on donor funding rather than sales, but specialize in the skills that allow them to undertake in-depth investigations and to communicate their findings in ways that reach wide audiences. Moreover, with transnational cooperation among journalists often helping to trace illicit financial flows across borders, international consortia of journalists have emerged as a new global governance institution in the fight against grand corruption.

*Recommendations: Ensure that state broadcasting licenses are distributed fairly, and that state contracts for advertising are awarded according to fair procurement procedures. Protect the rights of journalists to investigate and report by ensuring that libel laws do not impinge on public interest journalism, and protect whistleblowers through legislation.*



**SUPREME AUDIT INSTITUTIONS (SAIs):** One of the few areas where there is evidence of anti-corruption effectiveness is the role of supreme audit institutions (Rocha Menocal & Taxell, 2015). However, a range of obstacles can reduce their impact. These include a lack of clear distribution of powers and authority across different accountability bodies, e.g., audit, legislature, and judiciary;<sup>31</sup> executive interference in the auditing process (Wang & Rakner, 2005); and weaknesses in funding, infrastructure, and human capacity. While it is important that SAIs maintain their independence, research suggests that the level of independence is not necessarily related to a country's income level. There are many examples where low-income countries have SAIs with more autonomy than high-income countries.<sup>32</sup> Good relations with parliamentary public accounts committees, civil society, and the media are also important to success.<sup>33</sup>

*Recommendations: Ensure an open and competitive recruitment method and meritocratic career development process for SAI leaders and staff, with long terms of office. The SAI mandate should be broad, and with considerable autonomy to decide on the nature, scope, and extent of audits. It should also include jurisdiction over SOEs—or alternatively, a right to oversee the independent audit of SOEs by private sector firms. Ensure that SAIs have full access to records and information, and legislate to allow sanctions on those who fail to comply. Ringfence SAI funding such that any cuts require parliamentary approval. Require the SAI to report to parliament annually, and ensure that sufficient government time is given to scrutinise the report. Ensure that the SAI has power to monitor compliance with its recommendations and, if necessary, impose sanctions for noncompliance.*



## 4. Arresting State Capture and Rebuilding Afterward: Learning From Brazil and South Africa

In situations where countries appear to be heading into state capture, it can be difficult to build sufficient political momentum for action and convince key actors that the need for intervention is urgent. Potential domestic sources of resistance to capture might come from high-integrity government insiders (i.e., those who are close to the captor elite but committed to good governance). In some cases, an efficiency framing for reforms may be more productive than an anticorruption framing, being less confrontational for those working in close proximity to captors. Moreover, where the balance of power is already skewed, achieving political change is likely to involve co-opting some groups that have benefited from past corruption and capture.<sup>34</sup> Fighting systemic corruption requires diverse coalitions in which individual members may support reforms for very different—and not necessarily noble—reasons.

International organizations may also seek to exert pressure, although they must manage the risk that interventions will be interpreted by captor elites as unwelcome and illegitimate interference by an interfering external power and potentially exploited as part of populist or nationalist campaigns. On the other hand, when the international community turns a blind eye to initial steps toward capture, the lack of response may be interpreted by captor elites as a licence to continue. The EU was initially very slow to respond to the Orbán government’s encroachment on Hungary’s democratic institutions, and has rarely used its power to initiate Article 7 proceedings, a tool designed to uphold EU values. In more recent years, the Union has become more assertive and has begun to develop more effective systems, even making the disbursement of EU funds somewhat conditional on member states upholding the rule of law. This new approach appears to be having an impact.

Two of the cases discussed in this paper—Brazil and South Africa—provide examples of countries that have identified capture, stopped it in its tracks, and undertaken major investigations to understand how it functioned. These cases may offer lessons for other countries seeking to halt the slide into capture, change the country’s trajectory, and/or rebuild afterward.

### 4.1 Stopping Capture in its Tracks and Investigating

Brazil represents one of the biggest investigative successes of our time, having uncovered a wide and deep system of state capture in the form of the Odebrecht affair. But its ability to undertake such an investigation rested on the institutional foundations built over several years under former president Luiz Inácio Lula da Silva; particularly, investment in its law enforcement infrastructure. As part of a National Strategy for Combating Money Laundering and Corruption (ENCCLA), talented individuals had been appointed to key agencies and links among accountability institutions had been built to function explicitly as more than the sum of their parts.<sup>35</sup> This may also have increased the sense of collective empowerment to tackle entrenched corruption among investigators. In addition, a judicial innovation—the introduction of plea agreements whereby individuals who come forward with information receive lenient treatment—created incentives for those involved in corruption to give evidence about how such schemes had worked.

The South African case highlights the importance of both an independent judiciary and high-integrity public officials in resisting corruption and calling power to account. For example, when Zuma negotiated a 2015 deal that allowed Russia to build several nuclear power plants around the country, then finance minister Nhlanhla Nene openly disputed the deal and argued that the country could not afford nuclear energy. The





courts later overturned Zuma's plan, declaring it invalid because the government had not followed due process. In this way, individual integrity and institutional independence arrested the process of capture. Moreover, the subsequent Zondo Inquiry, a public inquiry investigating allegations of state capture and collecting evidence from witnesses, is a remarkable undertaking that allows for a thorough examination of what went wrong. As a result, it should be possible to design more resilient institutions.

## 4.2 Creating Constraints on Capture and More Resilient Institutions

In Brazil, a number of reforms are intended to prevent similar patterns emerging in future:

- In 2013, the Clean Company Act proposed a mandate for companies to have a compliance department. Implemented in 2015, the law has caused corporations to invest in compliance. As a result, more internal investigations are conducted, and governance frameworks involve more checks and oversight.
- In 2015, a new party finance law banned political parties and individuals from receiving corporate donations. Its effectiveness is, however, unclear. Indeed, investigations by the Supreme Court have revealed evidence of irregularities, such as many employees from the same company making donations to the same party or candidate.
- An Abuse of Authority law was passed in 2019. However, some argue it may have a chilling effect on the police and judiciary's willingness to investigate and prosecute politicians and public officeholders, partly because it is loosely drafted.<sup>36</sup>
- An initiative to introduce ten measures against corruption to the penal code has been introduced to Congress following a petition that attracted more than one million signatures, but it has not yet been passed.

In South Africa, Ramaphosa's primary response is embodied in the National Anti-Corruption Strategy,<sup>37</sup> which has been produced with input from key stakeholders including the public and private sectors, civil society, and the media, and involved nine regional public consultations. The strategy first and foremost seeks to encourage citizens to engage in holding the institutions to account, to improve professional standards in the public sector, and to enhance oversight and accountability institutions. Public procurement is noted as a priority sector, with reforms intended to improve transparency in line with the citizen-led accountability approach. The strategy targets many of the right areas, but puts a major responsibility on the shoulders of citizens to monitor how power is exercised; this in turn requires the government to be transparent about how it makes decisions and spends money.

In terms of strengthening accountability mechanisms, there are two outstanding priorities in South Africa. First, the scope of the Protected Disclosures Act—which provides protection to whistleblowers—should be expanded, and specialized courts should fast track the investigation of whistleblowing cases.<sup>38</sup> Second, Hellman and Kaufmann have advocated for an independent body to enforce conflict of interest rules—specifically the disclosure and recusal requirements for officials—and to review the existing rules.<sup>39</sup> The ANC's Renewal Integrity Commission is supposed to fulfil this kind of role,<sup>40</sup> but as a party-based body lacks independence and credibility. A more independent body should be established and provided protection under the constitution.



### 4.3 The Political Complexity of Post-Capture Reform

Building back after state capture is challenging. Institutions and processes that have been dismantled must be built anew. Those who previously engaged in state capture frequently remain powerful and will seek to undermine efforts to break up their power or build stronger institutions. The public, meanwhile, are often impatient for economic benefits—particularly if years of capture have worsened inequality—and tend to engage less with the slow and painstaking work of building responsible and high-integrity institutions than with the revolutionary fervor associated with halting capture.

The Brazilian case illustrates how state capture can create dilemmas akin to the “transitional justice” issues that arise after a change of regime. Should countries allow those who engaged in capture to remain in power, or exclude them entirely from office? In Brazil, the Odebrecht scandal ended the political careers of a generation of politicians and public officials, taking with them much institutional history and capacity along with their corrupt practices. Moreover, popular discontent at the widespread nature of corruption also provided fertile ground for populism, and has recently led to the election of a new regime with authoritarian tendencies.

In South Africa, Ramaphosa is under pressure to address deep underlying poverty and unemployment, which bolsters political support for radical Leftists, while also heading off a backlash from those implicated in state capture. His position both within the ANC and in the country is fragile, making it difficult to pursue the deep reforms needed.<sup>41</sup> Indeed, some of Ramaphosa’s policy priorities bring their own corruption risks. For example, the decentralization of state procurement to the local level might reduce the risk of central political control over the allocation of government contracts; but without proper checks in place, it could simply displace political favoritism to the local level. Similarly, the unbundling of the divisions of some state-owned entities such as ESKOM to allow them to operate independently reduces centralization, but may also create new corruption risks.

Herein lies a dilemma: while decentralization is ostensibly a sensible response to state capture because it disperses power, the accountability institutions are often weaker at local level, meaning that they may be less well-equipped to monitor decision making and act as checks and balances. Ramaphosa is also undertaking the privatization of major SOEs including South African Airways; as we have seen, this process is typically prone to corruption and should be carefully scrutinized.

Globally, populist political strategies pose a major threat to the ability to prevent state capture. Where state capture occurs in mature democracies, the national institutions are often so taken for granted that voters fail to recognize the threat or blindly ignore the evidence that capture is occurring, believing their own societies to be immune. In transition and fragile states, where institutions fail to provide basic services and power is being rapidly redistributed, voters may be more motivated to find personal short-term solutions to their everyday problems than to support the slow process of building good governance institutions.<sup>42</sup> Where voters believe that all politicians are equally corrupt and feel disempowered to bring about change, anti-corruption messages can even be counterproductive.<sup>43</sup> In societies where income inequality is stark, voters are more inclined to support populist parties,<sup>44</sup> even though such parties, once in power, do not necessarily deliver fairer distributions of income or improvements in the status of the most vulnerable.

Resilience to state capture requires deep commitment to and belief in the importance of independent institutions and high-integrity individuals. Such values can be challenging to keep sight of while coping with poverty and uncertainty.



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