

## State Capture in Transition

### Submission to the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State

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**Preamble.** We would like to begin our statement by commending this Commission for undertaking this comprehensive investigation of the phenomenon of state capture as it relates to South Africa. Though state capture is a significant challenge across both developed and developing countries, we know of no other country that has taken such a systematic approach to understanding the roots, forms and implications of state capture. We believe that this is a critical foundation for developing effective strategies to combat state capture. We look forward to the conclusions and recommendations of this Commission, which we hope will have resonance well beyond the South African context.

At the outset, it is important to emphasize that our statement will not comment upon the nature or extent of state capture in South Africa. Neither of us have studied nor experienced the phenomenon of state capture in the South African context. We acknowledge the work of many highly qualified South African authors, including individual scholars, prosecutors and public affairs institutes, who have expertly applied our conceptual framework to the complex realities of South Africa. We appear before the Commission as the authors of the initial analytical studies of state capture and observers of the phenomenon of state capture across many countries over nearly twenty years of research and policy engagement.

**State Capture defined and described and the experience of transition economies.** Even if it realistically be exhaustively done in this written statement, our objectives are to: i) define the very concept of state capture; ii) describe the context in which this concept was developed; iii) summarize various efforts to measure and analyze the extent and forms of state capture across countries of the world; iv) define the implications of state capture in the development trajectories of different countries, and, v) generally address some of the type of measures that countries can consider in combatting state capture.

While any strategy to combat state capture in South Africa should begin with a deep understanding of the concept and the experience of state capture around the world, the effectiveness of such strategies will depend on a careful analysis of the specific systemic characteristics of South Africa, which is not our area of expertise.

We first developed the concept of state capture<sup>2</sup> in the context of understanding the transition to market economies and democratic politics in the countries of the former Soviet Union and Eastern

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<sup>2</sup> Hellman, J. S., Jones, G., & Kaufmann, D. (2000). Seize the state, seize the day: State capture, corruption, and influence in transition. The World Bank. Available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=240555](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=240555)

Europe after the fall of the Berlin Wall in 1989. At the time Joel Hellman was a senior political counsellor at the European Bank of Reconstruction and Development and Daniel Kaufmann was a senior manager at the World Bank. Around that time a joint team of the World Bank and EBRD was working to design effective anti-corruption strategies as part of this transition and thus also engaged in understanding these issues.<sup>3</sup>

Though it was common at the time to compare countries by different *levels* of corruption, we observed that there were many different *forms* of corruption across the 27 countries that emerged from the former Soviet bloc. Moreover, we observed that these different forms of corruption appeared to have very different impacts on the pace and direction of the transition to market economies and democratic polities across the region. With these observations in mind, we sought to develop a new typology of corruption and to base this typology not just on theories of corruption, but on the actual measurement of different forms of corruption through extensive comparative survey research across the countries of the Soviet Union and Eastern Europe.

We identified two broad categories of corruption – administrative corruption and state capture. We defined administrative corruption as the attempts by individuals and firms to alter the *implementation* of laws, policies and regulations to their benefit through the provisions of illicit private gains to public officials. While some authors commonly referred to this form of corruption as “petty corruption,” we believed that such corruption was anything but “petty.” Administrative corruption could occur at any level of the political system – from paying police small sums to avoid traffic fines to paying politicians substantial bribes to exempt large firms from regulations.

In contrast, we defined state capture as the efforts of individuals or firms to shape the *formation* of laws, policies, and regulations of the state to their own advantage by providing illicit private gains to public officials. The key distinction in this typology is not the size of the bribe nor the level in the political system where the bribery occurs, but rather whether the corruption is directed to distort the intended *implementation* of laws or to *shape* the formation of the laws themselves.

In developing the concept of state capture, we drew upon an existing literature within economics on the concept of regulatory capture as defined half a century ago by the influential Nobel Prize-winning economist, George Stigler. Stigler defined “regulatory capture” as the idea that “regulation is acquired by the industry and is designed and operated primarily for its benefit.” The concept of regulatory capture was limited to the formation of regulatory rules that directly affected industry. Like state capture, core to the concept of regulatory capture is the emphasis on the influence of particular firms or industries on the *formation* of regulations. Importantly, Stigler recognized that

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<sup>3</sup> Anderson, J., Hellman, J. S., et al. (2000). Anticorruption in transition: a contribution to the policy debate. World Bank Report No. 20925 Vol, 1. Also, European Bank for Reconstruction and Development (1999) Transition report 1999: Ten Years of Transition.

these particularistic benefits favoring identifiable firms or industries were likely to have an overall negative impact on the broader economy. As Stigler stated long ago, “When an industry receives a grant of power from the state, the benefit to the industry will fall short of the damage to the rest of the community”.<sup>4</sup>

Our conceptualization of state capture went beyond the definition of specific regulations and referred more broadly to a wider array of laws, policies and rules that shaped the very contours of the state. In our view, countries in the midst of simultaneous economic and political transitions, like the countries of the former Soviet bloc, were particularly vulnerable to state capture since they were in the process of both redistributing property rights and redrafting the basic rules of the game by which their markets, politics and societies were governed.

As a result, individuals and firms sought to provide illicit gains to public officials to ensure that property rights were defined to their advantage and that laws, policies and regulations impacting them were drafted to build in permanent economic and political preferences in the functioning of their economic and political systems. Such advantages could lock in long-term economic rents, in many cases of staggering proportions<sup>5</sup>, to individuals and firms capable of influencing those public officials who make laws, policies and regulations. And these advantages could impose substantial costs to competitors and, more significantly, negative externalities to the broader public by establishing an unlevelled playing field in the emerging market economy.

In the case of the former Soviet bloc, we observed that countries with a high degree of state capture tended to make more limited and more uneven progress in the transition from the command Soviet-type economy to a more competitive market economy.

In fact, Hellman argued that some of the post-communist transitions were stuck in what he called a “partial reform equilibrium” in which various distortions in the functioning of the market economy were built into the very nature of the post-communist state providing highly concentrated advantages to particular individuals and firms with close connections to state power while imposing high costs on the rest of the population in the form of inconsistent or incomplete market reforms.

We went on to argue that state capture was a particularly pernicious form of corruption since it distorted the very nature of the state itself by manipulating the content of laws, policies and regulations to the advantage of particular individuals and firms at the expense of the common good. We also observed what appeared to be substantial variation in both the nature and extent of corruption in the 27 countries that emerged from the former Soviet bloc with significant implications for the progress in their transitions to market economies and democratic politics. This variation created opportunities to develop specific measures of such concepts as administrative corruption and state capture and compare the impacts of these problems on overall economic performance.

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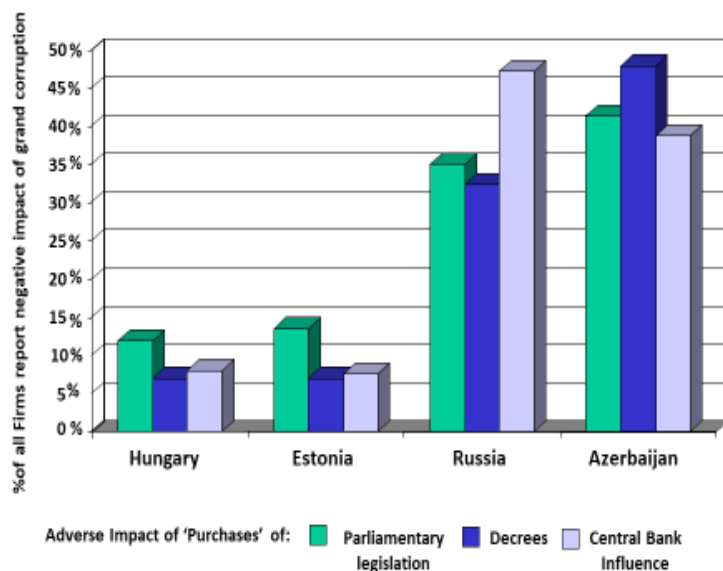
<sup>4</sup> Stigler, G. J. (1971). The theory of economic regulation. *Bell journal of economics and management science*, 3-21.

<sup>5</sup> The most prominent beneficiaries of state capture in the former Soviet countries became known colloquially as “oligarchs”, referring to their enormous wealth and political influence. See Hoffman, D. E. (2011). *The oligarchs: Wealth and power in the new Russia*. Hachette UK.

This led a joint effort by the World Bank and EBRD, which we led, to develop a cross-country survey instrument that attempted to measure state capture and other forms of corruption through analyzing the behavior of firms. The survey instrument – called the Business Environment and Enterprise Performance Survey (also known as BEEPS) – was administered across a representative sample of firms in each of the countries of the former Soviet bloc.<sup>6</sup> Several rounds of the BEEPS survey were implemented across multiple years.

The survey asked firm managers if they had been directly and significantly affected by private payments made to public officials to influence decision making in one or more of the following: parliament, the executive apparatus, the criminal courts, the civil courts, the central bank, and political parties.<sup>7</sup> The survey enabled us to categorize the extent of state capture across countries by comparing the share of firms in each country that claimed to be impacted by illicit attempts to influence laws, policies, rules and regulations. In addition, the survey identified firms that had used the provision of private benefits to public officials to influence laws, policies, rules or regulations to their benefit. We identified these as “captor firms.”

**Figure1**  
**‘Seize the State, Seize the Day’ Research on Capture, 1999-2000:**  
**Differences in Transition Countries on the Extent of State Capture**



On the basis of the survey, we could classify the countries of the former Soviet bloc into “high-capture” and “low-capture” countries. Using measurements that tracked the progress in transition to market economies and democratic politics defined by the EBRD (known as “transition indicators”), we were able to link it to our survey data on state capture and demonstrate that high-capture countries tended to show weaker progress in the extent and pace of their political and economic transitions. Although they made some strides in liberalization and privatization, they tended to be partial and these countries were much slower in enacting the complementary institutional reforms to support the emergence of markets. Their political regimes tended to be characterized by a greater concentration of power and limitations on political competition. These countries appeared to be stuck in a pattern of “partial reforms”.

<sup>6</sup> The findings and analysis reported here and in the cited papers were based on this specifically designed survey of nearly 4,000 firms in 22 transition countries, which was carried out in 1999 and comprised the following countries: Albania, Armenia, Azerbaijan, Belarus, Bulgaria, Croatia, Czech Republic, Estonia, Georgia, Hungary, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Poland, Romania, the Russian Federation, the Slovak Republic, Slovenia, Ukraine, and Uzbekistan. Hellman, J. S., Jones, G., & Kaufmann, D. (2000).

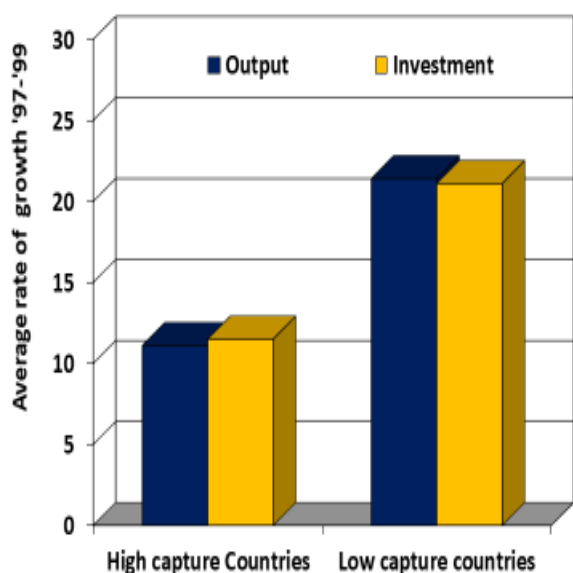
<sup>7</sup> Hellman, Jones & Kaufmann (2000).

In these high-capture countries, firms that engaged in state capture grew more than twice as fast as other firms, while in low-capture countries, these captor firms appeared to enjoy few advantages. Despite the specific benefits that captor firms enjoyed in high-capture economies, the overall enterprise sector in such economies grew at somewhat less than half the rate of firms in low-capture economies (figure 2). Capture therefore proved to be a strategy that generated substantial gains to specific powerful firms, while imposing an overall cost on all other firms in the economy.

In fact, we found that captor firms receive advantages in other areas as well, such as in terms of preferential access to some basic public goods, like for instance in the protection of property rights. The survey data showed that captor firms in high-capture economies were more than five times as likely as other firms to have seen improvements in the security of *their* property rights. Yet again, this came at a significant cost to the economy and to all other firms, since the overall level of insecurity of property rights was found to be much higher for the average firm (and even higher for non-captor firms) in high-capture economies than in low-capture economies.

**Figure 2**

**Costs of State Capture – Private Sector grows and invests less**



Our research also demonstrated that state capture systematically deterred private investment in the affected economies (figure 2) and created obstacles to the entry of small and medium-sized enterprises, undermining the key sources of sustainable growth. We argued that state capture tended to favor firms with connections over competence, and influence over innovation<sup>8</sup>. Such firms used their influence to block any policies and laws that might eliminate distortions in economic and political processes that threatened their advantages. In other words, actors who enjoyed extraordinary gains from the distortions of a partially reformed economy fought to preserve those gains, through state capture, by maintaining the imbalances of partial reforms over time.<sup>9</sup>

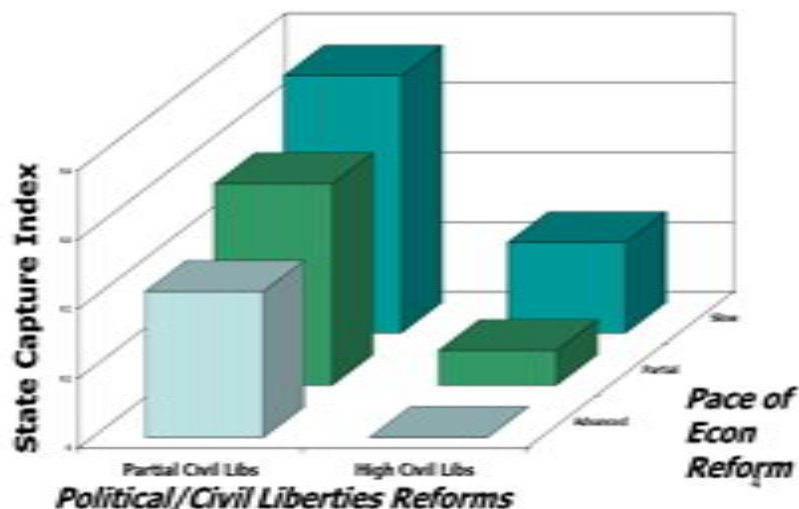
<sup>8</sup> Hellman, J., & Kaufmann, D. (2001). Confronting the challenge of state capture in transition economies. *Finance & Development*, 38(3), 31-31. Available at <http://www.imf.org/external/pubs/ft/fandd/2001/09/hellman.htm>.

<sup>9</sup> Hellman, J. S. (1998). Winners take all: the politics of partial reform in postcommunist transitions. *World politics*, 50(2), 203-234. Available at [https://www.jstor.org/stable/25054036?read-now=1&refregid=excelsior%3A04511259ead3bcd2f7a9540be271a527&seq=2#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/25054036?read-now=1&refregid=excelsior%3A04511259ead3bcd2f7a9540be271a527&seq=2#page_scan_tab_contents).

**Figure 3**

We found that, at any given pace of economic reform, there is a dramatic decline in state capture in countries with higher levels of civil liberties (figure 3).<sup>10</sup> In the capture economy, political influence was monopolized by powerful firms at different levels of government, with minimal checks and balances exerted by collective interests. We demonstrated that fostering competition in the economy and in the marketplace for political influence was a most effective way to prevent and combat state capture.<sup>11</sup>

**State Capture associated with lack of Economic Reforms, Political Competition & Civil Liberties**



Our research also showed that post-communist countries with more frequent executive turnovers and shorter government tenures, i.e. greater political competition, achieved far greater progress in their economic transitions to a market economy.<sup>12</sup>

**Expanding the analysis of State Capture.** Subsequently a data and research effort was undertaken to cover the measurement of state capture in other countries around the world.<sup>13</sup> This was done by an analysis of the data based on specific questions related to state capture integrated into the survey of firms in 104 countries in 2004 carried out by the World Economic Forum. The data analysis based on this information from firm executives indicated that state capture and corruption posed a serious challenge in many rich, emerging and developing countries, and also suggested that such corruption was negatively associated with a country's competitiveness.

At that time, almost fifteen years ago, the data pointed to low levels of capture in the Scandinavian countries, among a few others, sharply contrasting many other countries, including the United States, Brazil as well as other countries in South America, some countries in Africa, and many in the Former Soviet Union. The analysis of the data also highlighted the generally wide gap among OECD countries between traditional forms of corruption, such as administrative bribery, which was relatively low, and their extent of state capture (including its quasi-legal forms), whose prevalence was high.

<sup>10</sup> Hellman & Kaufmann (2001).

<sup>11</sup> Ibid.

<sup>12</sup> Hellman (1998).

<sup>13</sup> Kaufmann, D. (2004). Corruption, governance and security: Challenges for the rich countries and the world. WEF: Global Competitiveness Report 2004-2005. Available at <http://unpan1.un.org/intradoc/groups/public/documents/un-dpadm/unpan044780.pdf>

**Implications of State Capture Research.** After nearly twenty years of research on the concept of state capture, rooted first in the post-Soviet transition economies and then expanded to other regions across the world, we would argue that our analysis suggests a broader rethinking of the traditional understanding of corruption more broadly. For generations, the traditional definition of corruption has focused on abuse of public office for private gain. Yet in identifying and analyzing the phenomenon of state capture, we recognized that:

- i) the balance of power in corrupt transactions often did not fully reside with the public official (extorting the private agent); instead often the private actor (the captor) wielded more power than the public official and even politicians;
- ii) within the public sphere, high level politicians as those responsible for drafting and approving laws, policies, and regulations wielded more power and responsibility for the abuses than public officials or bureaucrats as implementors of those laws, policies, and regulations;
- iii) sophisticated forms of undue influence and high level corruption were not always necessarily illegal in a strict formal sense, according to the existing laws at the time in the country, and,
- iv) manifestations of high level corruption other than administrative bribery -- such as the shaping of the rules of the game (policies, laws and regulations) by the elite, were highly prevalent and far more costly.

Hence, the concept of state capture went beyond traditional definitions of corruption to account more broadly for the undue benefits derived by the private few from their excessive influence in shaping the institutions, policies, laws and regulations of the state to their own ends. Our aim was not to fully replace the conventional definition of corruption<sup>14</sup>, but to add new facets to our understanding of different forms of corruption whose impact appeared to have greater economic costs and political consequences for the trajectory of affected countries. It is no surprise therefore that --beyond the growing body of work by academics--, the notion of state capture is increasingly becoming part of the lexicon in prominent organizations (including Transparency International and the International Monetary Fund), as well as in some countries.

An important contribution of the concept of state capture has been to place the private sector as central as the public sector in defining forms of corruption. In this context, the case was also made that the form of corruption that we had identified as state capture can often be legal, according to the laws of the land prevailing at a point in time.<sup>15</sup> In particular, where the “rules of the game” have been captured by the elite, manifestations of so-called “legal corruption”, including undue influence, may in many instances be more prevalent than strictly illegal forms, such as outright bribery. Legality is often determined at the political level; therefore, it is a decision variable of the elite in power protecting their interests (e.g. lobbying, campaign finance; financial sector regulation). The emergence of a corruption-prone legal framework is therefore related to the dynamics of state capture, and it has implications for types of reforms, in that what has been considered legal at a particular moment in time, may subsequently need to become illegal.

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<sup>14</sup> Kaufmann (2004).

<sup>15</sup> Kaufmann, D., and Vicente, P. C. (2011). “Legal corruption”. *Economics & Politics*, 23(2), 195-219.

**What can be done to address state capture?** In order to address state capture, it is critical to have an in-depth diagnostic of the specific circumstances of each affected country, one which considers its own unique socio-political and institutional context. Further, the detailed nature of corruption and state capture, whose causes and manifestations vary from one setting to another, needs to be studied and understood so to elaborate country-relevant action programs. There is no simple, “boiler-plate” template that can be applied to all countries.

To develop an action program, country-specific expertise is essential, even as some general empirical diagnostic approaches and tools can assist in this process. Further, general lessons of experience globally may also be useful in pointing to an array of potential reforms and initiatives that can have an impact. Here we suggest some potential factors and initiatives, drawing from global experience, mindful that identifying the priority measures that may warrant adoption in a particular country will vary from one setting to another. In other words, here we cannot offer a definitive ‘roadmap’ to address state capture for any given country.

While not exhaustive, the range of potential reform areas is substantial, even though they generally fall into a few broad reform categories – political and economic contestability; political finance; conflict of interest; procurement; sector-specific initiatives, as well as transparency reforms generally.

As will be clear from the categories and recommended actions outlined below, we explicitly focus on institutional and policy reforms that are aimed at reducing the risk of state capture. We treat state capture as a product of institutional deficiencies –and as a systemic failure of governance--, not as a criminal issue. As such, we do not make recommendations regarding investigation or prosecution of state capture after the fact. These are issues that are highly contingent on the specific legal and judicial systems of individual countries. Thus, even though some legal and judiciary initiatives and reforms (including those that can be preventive and not necessarily punitive) may also need to feature as a component in a strategy to address state capture, we do not cover these here.

Indeed, the focus of the types of reform recommendations listed below are preventive, not punitive. Often these preventive measures are undertaken in conjunction with investigations and prosecutions of illicit activities as a demonstration effect of a country’s commitment to root out corruption. But we emphasize that prosecutions in the absence of significant institutional reforms to tackle the vulnerability of political and economic systems to state capture have not been seen as successful in international experience.

### ***Political and Economic Contestability.***

As suggested in our section on our work in economies in transition, a key finding we had from the data analysis regarding possible determinants of state capture pointed to insufficient political and economic contestability (see Figure 3 above). A corollary from such research on transition economies was that an important antidote to state capture was to ensure a competitive polity and economy. Thus, for post-Soviet economies we emphasized the importance of fostering competition



in the economy to reduce the concentrated market power of individual firms as well as having an open multi-party system to create a truly competitive marketplace for political influence.

Encouraging a level playing field –where medium and small scale enterprises can thrive--is therefore important to mitigate state capture, as is having political and civil liberties safeguarded. Countries that successfully turned to more competitive markets and polity such as new members of the European Union, like the Baltic countries, Slovenia, and Slovakia, performed better than their counterparts, such as Ukraine and Russia.

While political and economic contestability is likely to be a necessary condition for mitigating state capture in economies in transition and others, these would need to be further detailed and fleshed out in each particular country context. Further, while these priority reforms may prove to be necessary for progress, they are unlikely to suffice on their own. Other important aspects of governance-related reforms would need to be considered as well. Experience from other countries, and regions, including in Latin America, can also be helpful. The reform themes, and the possible measures within them that are showcased below, are indicative.

### ***Political finance***

Both legal and illegal private interests can infiltrate political bodies through campaign contributions and other forms of political financing. In Latin America, not only infrastructure companies have been important contributors with some intending to “privatize” the public decision-making process, but also in some countries drug traffickers and organized crime have used this mechanism to buy impunity.<sup>16</sup> The political finance mechanism for enabling state capture is also prevalent at the subnational level, where often there is large concentration of economic power and less competitive political arenas.<sup>17</sup>

As a response, there should be measures that promote electoral competition, improved regulation and transparency of political finance. Some practices which have been effective in combatting state capture include:

- Public funding and subsidy systems that promote competition by enabling small parties and candidates that have no close ties to business, as well as controlling use of funds and resources by incumbents during campaigns.
- Control of public finance should include bans on anonymous contributions and financing from foreign sources and limits on contributions from legal entities.<sup>18</sup>
- Restrictions on spending, especially in high-profile and costly areas, such as campaign advertising.

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<sup>16</sup> Casas-Zamora, K., and Zovato, D. (2015). The Cost of Democracy: Campaign Finance Regulation in Latin America. Policy brief, Latin America Initiative, Brookings Institution. Available at <https://www.brookings.edu/wp-content/uploads/2016/06/The-Cost-of-Democracy-CasasZamora-Zovatto.pdf>.

<sup>17</sup> OECD (2016), Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture, OECD Public Governance Reviews, OECD Publishing, Paris. Available at <https://doi.org/10.1787/9789264249455-en>

<sup>18</sup> Expert Advisory Group’s Report (EAG) (2018). Corruption, Transparency, and Integrity in Latin America and The Caribbean.

- The public subsidy system for campaigns and spending limits should be designed to avoid favoring incumbents and, overall, their legislation should reflect citizens' political preferences.
- Rules of transparency are necessary for the success of other campaign finance regulations. Transparency is suggested for all contributions to and from all relevant actors, including candidates, corporations, political foundations, NGOs and associations linked with candidates or parties.

### ***Public procurement***

Procurement is often a focus for state capture as public procurement can be a major source of economic rents for firms closely tied to politicians and political parties. Using state capture to shape the procurement playing field to the benefits of specific firms is perhaps one of the most common forms of state capture. As a result, procurement reform is generally an important starting point in the effort to combat state capture. A procurement process that enhances competition in new investments and renegotiations, contract transparency, and protecting whistleblowers are key for all infrastructure contracts in energy, transportation, extractives and related sectors. Among the reforms to enhance such competition in procurement are:

- A separation of powers and responsibilities between infrastructure planning bodies and the units in charge of contract compliance to break conflicts of interest between promoting new investment and enforcing existing contracts.<sup>19</sup>
- The use of independent technical review panels should be promoted to mediate conflicts and review any contract renegotiations.<sup>20</sup>
- Provide incentives and protection for whistleblowers to come forward with information on corrupt deals in infrastructure.<sup>21</sup>
- Avoid "financial equilibrium clauses" in public-private partnership legislation and contracts,<sup>22</sup>
- Investments from public-private partnerships should become part of the government's budgets, balance sheet, and normal oversight processes.

### ***State-owned enterprise reform***

State-owned enterprises can be used to cement the ties between politicians and private actors. As such, they are often critical transmission mechanisms through which state capture occurs. Though traditionally, state-owned enterprises are often seen as potential vehicles for fostering the state's interests, there are also risks that powerful state-owned firms use their close relationships to state actors to shape laws, policies and regulations in their own interest. Moreover, the murky

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<sup>19</sup> EAG Report (2018).

<sup>20</sup> Ibid.

<sup>21</sup> EAG Report (2018) and OECD (2016). The latter emphasizes that these measures can build ethics and bring value to the organizational culture both in the private and public sector. Moreover, whistleblowing is not only a way to declare wrongdoing, but can also have a deterrent effect on it.

<sup>22</sup> Ibid. These clauses have been a major reason for opportunistic renegotiations, with high efficiency costs. Such clauses mandate that any judicial, administrative or legal action by government that affects the firm's income must be compensated.

boundaries between ownership and control rights in state-owned enterprises can give leeway to managers to manipulate their ties to the state for their own interests.

As a result, to prevent state capture emanating from state-owned enterprises, there needs to be a clear separation of the management of state-owned companies and politics, and this particularly important in key sectors such as energy, extractives and finance. Government's nominations of professional management should be subject to independent high level commissions driven by meritocratic and professional objectives, and also considered by the parliament to ensure its independence from external pressure.<sup>23</sup>

While exhaustive recommendations to address capture in SOEs is not our objective here, related measures to illustrate the need for reforms include the empowerment of professional, independent boards, which should also be selected through a meritocratic process, emphasizing technical expertise over political patronage. Further, ensuring transparency and oversight by disclose revenues, costs, revenue flow between SOEs and the state, disclosing data on production, plans, trading activities as well as quasi-fiscal activities. Independent financial audits and an effective level of legislative oversight are also very important.<sup>24</sup>

### ***Sectoral Reforms***

As mentioned, we are keenly aware of the need to tailor reforms to each country context. Similarly, reforms need to be designed and implemented with regards to the particularities of each key sector subject to capture. In fact, at a national level, the determinants, manifestations and implications of state capture will be rather different in a country whose mainstay is, say, the financial sector, versus an oil-rich country. State capture is highly likely, and costly, in either, yet the particularities will vary, which matters for reform design and implementation.

Further, the very different political, regulatory, technical and economic characteristics of each key sector does warrant a sector-specific approach, complementing the over-arching national (and subnational) level reforms to address capture. The approach and particularities to address state capture in the financial sector, for instance – where lessons can be drawn from United States, among others --, will be very different than for the oil or mining sector.

As an illustration, consider reforms of State Enterprises, just discussed above. Reforming SOEs in the extractives sector (oil or mining) requires specialized diagnosis taking into account the political, regulatory, and technical nature of SOEs in that sector. The types of reforms regarding the SOEs in this sector – regarding transparency, their remit, oversight, commercialization, and corporate governance will have particular characteristics derived from the sectoral specifics.<sup>25</sup>

Another area of reform, addressed in brief next, is transparency. The types of priority measures required for transparency in the financial sector is rather different than the very sector-specific type

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<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

<sup>25</sup> As a general illustration of these issues, see Kaufmann, D., Heller, P., and Gillies, A. (2018) "What makes an accountable state-owned enterprise?" Brookings Institution

of transparency reforms (revenue flows, contracts, beneficiary owners, commodity trades, environmental assessments, etc) that is part of the best practice norms in natural resources. In the context of such sectoral transparency reforms in extractives, for instance, countries can benefit from joining the global initiative supporting best practices in this area, namely the Extractives Industry Transparency Initiative (EITI), which currently includes over 50 member countries.<sup>26</sup>

### ***Conflict of interest***

At root, state capture is a manifestation of a conflict of interest. Private individuals or firms seek to engage politicians and public sector actors through the provision of private benefits to shape public decisions in their interests. As a result, robust legislation to regulate conflicts of interest and the interaction between public officials and private actors is critical to prevent state capture. In addition, a strong monitoring system to police conflicts of interest is critical to make such legislation effective. Conflict of interest legislation is still in its infancy in many countries around the world. Where such legislation does exist, enforcement mechanisms are generally quite weak.

Some measures to consider to address conflicts of interest include:

- Establishing and implementing clear cooling off periods, full disclosure of financial assets and conflicts of interests, and recusal mechanisms for countering revolving doors.<sup>27</sup>
- Technology also provides valuable tools in the prevention, detection, investigation and prosecution of corrupt practices.
- The private sector can play its part by strengthening its corporate compliance systems to address existing and evolving challenges.
- Ensure citizen input is received and acted upon quickly, feeds the system with feedback, inter alia by protecting civic space.

### ***Transparency***

As the popular expression goes, “sunlight is the best disinfectant”. Beyond conflict of interest legislation, practices that promote greater transparency at the intersection of state and private sector interests are critical to preventing state capture. Effective disclosures are key for monitoring and accountability, and can be particularly effective where civil society and the media are able to operate without undue constraints. Such practices could include:<sup>28</sup>

- Essential information for any industry is obtained through proactively establishing and publishing a registry of ultimate beneficial ownership of all corporate entities and similar legal vehicles, adopting effective sanctions for untruthful registration.
- Disclosure of and public access to the financial dealings of politicians and other officials, and preventive legal rules that require officials either to divest themselves and their families of certain financial interests or to recuse themselves from taking part in the decision-making process where they have a conflict.

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<sup>26</sup> Extractives Industry Transparency Initiative (EITI), at <https://eiti.org/>

<sup>27</sup> EAG report.

<sup>28</sup> As in previous subsection, largely drawn from the cited EAG 2018 report, of which D. Kaufmann is an author.

- An independent body to enforce disclosure and recusal requirements in a way that can force the resignation or reassignment of offending officials and review challenges to the rules.
- Particularly in the banking sector, a critical gate-keeper of legitimate business transactions, adhere not only to state of the art regulations in prevention of money laundering, but also to the highest standards in ethical practices, including transparent financial information.

## **Concluding.**

We began by commending the Commission on its ambition to take a systematic approach to the problem of state capture. Throughout our statement, we have emphasized that state capture is a major systemic challenge, linked to institutional and governance deficiencies and failures.

There are always corrupt individuals on both sides of the state capture relationship. Yet the problem itself is rooted in institutional flaws that concentrate economic (and political) power, that enable those with such economic power to unduly influence political decision-making, that reduce competitive pressures from countervailing actors, and that enable powerful actors to shape laws, policies and regulations for their own benefit. This is done at the expense of the common good, the the well-being of common citizen, and of the small and medium scale entrepreneurs.

The risks of state capture are rather evident in countries in transition, where the very rules of the game shaping the market economy and the political system are in flux. This creates opportunities for state capture, since the incentives for powerful economic actors to shape the new rules of the game to their own benefit are strong. The potential gains are enormous. Equally significant are the costs imposed on the greater good for the public at large in terms of misallocated resources, unfair competitive practices, unequal distributions of rights, benefits, and incomes, and the perpetuation of an unequal level political and economic playing field. Such outcomes can spur broad popular resentment and disillusionment. Yet with political resolve and determination by the key stakeholders, enabling the adoption and implementation of governance reforms, countries can mitigate the risk of state capture and its direst consequences. And even if far from easy, those countries experiencing state capture can make inroads over time in addressing it.