



STATE CAPTURE DIAGNOSTICS ROADMAP

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The concept of state capture has been in use for some time now and has helped policy makers and analysts account for some of the most insidious forms of subversion of governance. As this practice has become a major issue of policy concern, in particular in relation to developments in Southeast Europe towards EU enlargements, and in view of the security implications for Europe following Russia’s more aggressive recent stance vis-à-vis its energy projects and enlargement plans, the general notion needs to find its operational and policy-relevant dimensions. This paper contributes to a higher analytical precision in the definition of state capture, which enables the construction of measures that would help evaluate, assess and eventually measure this phenomenon. This requires a more in-depth analysis of the state capture concept, an analytical description of the results of state capture involving different social actors (government, companies, the economy and society at large) and a description of its principal mechanisms. As state capture is often associated with corruption, it would be necessary to differentiate between these concepts and find their eventual intersections.

The ultimate goal of the current discussion is the construction of an **index that would enable moni-**

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toring state capture risks across countries and over time. Here we present a possible way to measure state capture in certain institutions with a focus on the security sector, as the key target of capture as it controls the repression monopoly of the state. Further work would be needed to arrive at a comprehensive and sound index measurement of state capture.

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Defining state capture

Defining state capture better would allow to close the gap between existing examples of the phenomenon in the different countries, and its differentiation from adjacent concepts like corruption. It could provide the basis for choosing the best existing or for developing specific measurement and monitoring techniques to encompass part or all aspects of state capture in an index format.

State capture, despite its frequent use does not have a single definition because it is used in different contexts and covers various types of phenomena. In some cases, it is used as a term based on a definition, but could also acquire various other uses based on the common meanings of “capture”. This gives way to a wide array of applications which creates confusion. For example, state capture is used when referring to the establishment of control by one state over the resources of another state,¹ for the capture of the institutional capacity of the executive (or other powers) by political parties aimed at extracting corruption rents,² or when business sector entities seek to shape (by paying bribes to state officials) the “rules of the game” (legislation) in order to obtain privileged status or preferential treatment.³

The common characteristic of all forms of use of the state capture concept is that they refer to a **deviant form of relations** between several types of collective actors: the state (perceived as a summary label for the executive, the legislative and the judiciary), the business sector (specific business sector entities) and the political class (political networks, parties, etc.). Using the term *deviant* suggests that state

capture is considered a deviation from the form of relations between these actors which is considered a norm or an ideal. In this sense, the state capture concept is purely normative: it is used to analyse deviations from a certain socioeconomic model which are generated by corruption relationships. This automatically implies that both the mechanisms and the results of state capture in different societies and states would diverge.

The state capture concept

The state capture concept is most suitable for analysis of societies in which the commonly accepted normative ideal is that of a liberal social order in combination with a neo-liberal economic model. These ideal types (in the Weberian sense) presuppose specific norms for the legitimate relationships between the interests of the main actors/participants in the state capture process (state, business sector and political class): the economy has a non-monopolist structure, the state bureaucracy is neutral to the different interests in society; the political class (through parties), on the one hand, represents interests the legitimacy of which is established through general elections, and, on the other, interests which do not undermine the structure of the economy or the neutrality of the bureaucracy. The deviations from this model can vary but – when based on corruption – they constitute state capture in its various forms, depending on the active side in this process (the so called *captors*). To a large degree, the **forms and type of state capture are determined by those captors and their relative power**. Evidence from various countries shows that the capture process could be initiated by both non-state actors (e.g. business entities) and by the state –

¹ See: Brooks, G., Walsh, D., Lewis, C., & Kim, H. (2013). *Preventing corruption. Investigation, enforcement, and governance*. London and New York: Palgrave Macmillan., p. 115-123

² See: Innes, A. (2014). The Political Economy of State Capture in Central Europe. *Journal of Common Market Studies*, 52(1), 88-104.

³ See: Heliman, J., Jones, G., Kaufmann, D., & Schankerman, M. (2000). Measuring Governance Corruption, and State Capture. How Firms and Bureaucrats Shape the Business Environment in Transition Economies. Policy Research Working Paper No. 2312, (April), 1-51.; Hellman, J., & Schankerman, M. (2000). Intervention, Corruption and Capture: The Nexus between Enterprises and the State. *The Economics of Transition*, 8(3), 545-576.; Hellman, J., Jones, G., & Kaufmann, D. (2000). Seize the State, Seize the Day: An Empirical Analysis of State Capture and Corruption in Transition Economies. World Bank Policy Research Working Paper, (2444), 1-41.; Hellman, J., & Kaufmann, D. (2001). Confronting the Challenges of State Capture in Transition Economies. *Finance & Development*, 38(3).

when public bodies capture businesses on behalf of officials, political groups, networks or parties. Occasionally, both processes run in parallel.

Given that state capture is often considered an **extreme form of corruption**,⁴ the two concepts should be differentiated. Two types of demarcation lines could be defined: quantitative and qualitative.

Quantitative differentiation would mean that the principal differentiating factor is the number of corruption transactions which can be attributed to the active side of the capture process (the captor). Based on the number of transactions, administrative corruption would include single (usually unrelated) transactions, while state capture includes bundles of connected (synchronised or directed at a specific goal) corruption transactions. If corruption could be presented as a **continuum** between two extremes: 1) **lower**, which represents a situation when an actor (individual or company) and an official conclude a one-off corruption transaction (abuse of power for private gain) resulting in undue advantage for the actor and material gain for the official for this particular transaction only, and 2) **higher**, when an actor concludes multiple corruption transactions with one or more officials, resulting in material gain for the official(s) and linked to many (or most) activities of the actor, accruing to the actor undue advantages across many aspects of his activities. Within this continuum three types of actors could be identified:

- **Advantaged** actors: those who conclude single corruption transactions with an official;
- **Privileged** actors: those who conclude multiple corruption transactions;
- **Captors**: actors who have full coverage of all their activities with corruption transactions. The transactions are systematic and the relationships of corruption are long-term, ensure dominance of the actor in a certain area and seize the state for the benefit of the private interest of this actor.

State capture would refer to the space between privileged actors and captors. For the captor, the result of the capturing process would be that he is no longer pressed to comply with market or other rules and is able to extract undue advantages and/or rents by default and in a recurring pattern. Ultimately the captor could achieve the status of a designated or chosen “free rider”,⁵ i.e. be exempt from or control and shape most rules applying to other actors in a given market or social sector.

Qualitative (substantive) differentiation is linked to the mechanisms of state capture, i.e. the forms of corruption the captor uses in order to complete the process and to achieve captor status. To analyse the elements of corruption applicable to the capture process, the Principal-Agent model, which includes several assumptions about the elements of corruption, could be employed:

- Corruption occurs in the **interactions (exchanges) between public organisations and individuals/businesses**. At least one on the actors is a collective unit (the public organisation), which consists of at least two individual actors: Principal and Agent. Every public organisation is created to serve a public function. The embodiment of this function and the associated discretionary power is with the principal. The agent is the public official who is directly responsible for the implementation of the public function. While the principal is “the holder” of public power, the agent is entrusted with this power by the principal.
- Due behaviour of public officials (the agents) is defined by the rules (laws, norms, prescriptions, etc.) of the public organisation. Corruption in this context is defined as **noncompliance with rules (violation), which is aimed at and/or results in private benefits for the official**. As the behaviour of officials is essentially the exercise of entrusted power for public benefit, corruption is abuse of this power and also breach of trust in the relation between the principal and the agent in favour of the client.

⁴ State capture is considered the “most destructive” or “severe” type of corruption: See: Brooks, G., Walsh, D., Lewis, C. and Kim, H. (2013). *Preventing corruption. Investigation, enforcement, and governance*. London and New York: Palgrave Macmillan., p. 122.

⁵ The free rider concept is used here to denote cases where captors are exempt from rules all other actors have to adhere to.

- The public sphere is composed of hierarchies of organisations (central government, local government, agencies, departments, etc.). Except for the highest levels of government, public organisations are in turn agents of the highest level – the President, Prime Minister, etc., which appear as “superior principals”. This allows corruption to become a **multilevel principal-agent interaction** in which the corrupt official is at the higher level, while lower level officials commit corrupt acts following orders of their superiors. The breach of trust in such a scheme is not with the formal principal (the higher level of government) but against the public interest. Mimicry at this level is more complicated and most often high-level principals attempt to interpret corrupt acts as their specific understanding of the public good.⁶ Very often it is possible to present and interpret noncompliance with rules that guard or define the public interest (high level political corruption) as beneficial for society or as something unavoidable.
- A corruption transaction can be described as an **exchange of resources**. The resource of the agent is discretionary power and it is exchanged for the resource of the client – the benefit or gain that the agent receives (money, favours gifts, etc.). In a hierarchical system of public organisations

(hierarchy of principals), the exchange relations are more complicated. The superior principal exchanges his power over subordinates Principals for private benefit. Relations between principals form an additional layer of power relations and exchange of resources between principals: either the final gain could be split or principals could engage in more complex relations like nepotism, favouritism, clientelism, etc. Such relations can be established both within one public organisation and between subordinated organisations.

- The main driver of corruption exchanges is **interest**. For the agent, the interest is defined by the possible gain or benefit. For the client, the interest lies in the deliberate noncompliance with rules by the official. Depending on the rules, client benefits could be various: preferential treatment, competitive advantage, privileged access to resources, exemption from sanctions, etc.

Analytically, **corruption** could be decomposed to its **two principal components**: gain and abuse of power and this decomposition could give an idea of the approximate theoretical location of state capture. Having in mind that every corruption transaction should include element of both gain and abuse, a more detailed (although non-exhaustive) list of forms of gain and abuse would include:⁷

Abuse of power (violation of rules)	
Simple forms	
Abuse of discretionary power	Implementation (or non-implementation) of laws or rules in favour of a client (citizen, company, public organisation). Providing illegal access to information. Extortion or threat of selective/targeted implementation of laws or rules. Deliberate red tape in order to extract bribes.
Abuse of property	Theft, fraud, embezzlement of property, money, etc.
Conflict of interest	Kin or other personal relationship between officials who are responsible for certain decisions and the actors who these decisions apply to.

⁶ Rothstein, B. (Ed.). (2014). State-of-the-art report on theories and harmonised concepts of corruption. Quality of Government Institute. Retrieved from <http://anticorpp.eu/publications/d1-1-state-of-the-art-report-on-theories-and-harmonised-concepts-of-corruption/>; Rothstein, B. (2014). What is the opposite of corruption? *Third World Quarterly*, 35(5), 737-752. doi:10.1080/01436597.2014.921424.

⁷ A similar list has been elaborated in: Sampford, C., Connors, C., Shacklock, A., & Galtung, F. (Eds.). (2006). *Measuring corruption*. Burlington, VT: Ashgate Pub Co., p. 10-14.

Abuse of power (violation of rules)	
Complex forms⁸	
Nepotism	Appointing relatives or other kin in public service jobs and or deciding in favour of relatives or other kin.
Clientelism	Systematic or one time decisions in favour of a circle of friends of actors connected to the decision making official.
Favouritism	Systematic or one time decisions in favour of a circle of actors connected to the decision making official through political affiliation or other non-personal relationship.
Societal	
Paternalism	Systematic decisions at central level in favour of a circle of actors connected to the decision making official through political affiliation or other non-personal relationship.
State capture	System of corruption transactions (of different types and involving one or more public institutions) which ensure by default and over extended periods of time a privileged status of an actor in a given sector or area of activity.
Gain (single official or institution)	
Simple forms	
Money	
Gifts	
Services	
Complex forms	
Control over one's own actions	Promise to act or refrain from action (on behalf of the benefactor) in favour of the official who has violated rules.
Control over outcome of events	Promise to use office position or control over institutional decisions in favour of the official who has violated rules.
Revolving door	Appointment at high salary job of an official who has systematically violated rules in favour of the appointing company or individual.
Illegitimate donations to political parties	Transfer of funds by citizens or companies (benefactors) in favour of institutional actors (public institutions, parties, etc.) and not in favour of the concrete official who has violated rules.

While at the micro level corruption appears as abuse of power (rules) for private benefit, at the macro level this translates the level of corruption into a characteristic of the type of governance regime (ranging from particularism to ethical universalism).⁹ When shifting from the micro to the macro level, the analysis of corrupt practices shifts its focus. While the micro level analysis views corruption from the point

of a specific abuse of power, macro level examination looks at the structure of the whole governance regime. Both levels are qualitatively different and therefore require different types of interventions.

State capture could be defined as a combination of different forms of corruption which have a single objective: to **secure wholesale** (by default) and **long**

⁸ Elaboration of the links between these concepts and corruption could be found in: Rothstein, B. (ed.) (2014) *State-of-the-art report on theories and harmonised concepts of corruption*. Quality of Government Institute; Sampford, C., Connors, C., Shacklock, A. and Galtung, F. (eds) (2006) *Measuring corruption*. Burlington, VT: Ashgate Pub Co.

⁹ Mungiu-Pippidi, A. (Ed.). (2011). *Contextual Choices in Fighting Corruption: Lessons Learned*. Oslo: Norad, p. 15.

term privileges to captors by exploiting the power of government for private benefit. Most forms of state capture have some common characteristics:

- They are realized through corruption transactions and mechanisms. Therefore, state capture incorporates most characteristics of corruption relations.
- State capture schemes are not a mass phenomenon (do not include large population groups) but refer to actors (most often collective actors, including networks) who have high leveraging power and command of substantial resources and influence capacity.
- State capture is not an ad hoc action (i.e. aiming at solving a specific problem or a reaction in a specific situation) but is systematic. Its objective is to achieve sustained advantage in a given sphere.
- State capture is one of the possible competition tools. It is used to achieve differential advantage for a given actor (network) and based on that – possibility to extract differential resource advantage.

Analytically state capture could be decomposed into the following elements:

Actors: three types of actors are most often involved: private interest (business entities), networks/institutions of the state, and parties/networks representing different political interests. Each of these actors could play an active role (and obtain captor status) in the different capture types mechanisms, and the results of the process would differ.

Results: these are privileges and status the captor obtains, and the results for society in select sectors. The principal result for the captor is the ability to enjoy undue advantages, extract corruption rents and ultimately become a “free rider”. If the captor is a company capture would ultimately result in monopoly position in a given market (as capture would enable undue market concentration); captor’s interest would have a priority over the public interest and, eventually, the ability to block attempts to deprive the captor of this position. When the captors are state institutions or political entities, result would be the ability to extract corruption rents; however,

the capture status would need to include business partners, who would provide (e.g. financially) the rent itself. Additional forms in this respect would be appropriations of public resources (government and other assistance funds).

Mechanisms: the methods used to achieve captor status (except competition and excellence). The basic channels (methods) to achieve undue advantage (e.g. illegitimate market concentration) could be:

- Laws or regulations which ensure market advantage or exemption from prosecution (lobbyist legislation);
- Political corruption aimed at influencing the executive, or the legislative. In certain situations, preferential access to the judiciary could also be ensured.
- Judiciary corruption to ensure exemption from prosecution or favourable decisions of courts;
- Institutional corruption: buying civil servants in public institutions to ensure inaction on cases of market concentration and its consequences. The latter could be numerous, ranging from diminished quality of goods and services and ending with violation of tax, customs and other regulations in order to increase profits.
- Corruption in the access to public resources – procurement contracts and subsidies. Important in this respect is that regardless of the government in power, captors have privileged access;
- Influencing the design of public policies. This includes captors influencing sector policies, economic policy, budget allocations, and even foreign policy decisions (lobbying for agreements with specific countries, modification of international agreements, and partial closure of domestic markets).

The combination of corruption forms used to achieve state capture varies depending on the specific situation and governance model in a given country. Therefore, the **main (starting) indicator for identifying the presence of state capture** is the existence/prevalence of captors, i.e. undue concentration (by sectors, markets, etc.) of resources and/or power in certain actors. The prevalence of different forms of corruption used to achieve state

capture is a secondary group of indicators because they describe the specific mechanisms through which a state capture situation has been achieved or how it operates.¹⁰ State capture involves the concentration of means (forms of corruption) around a limited group of actors. In this respect the assessment of state capture should necessarily start with the result/outcome indicators (market concentration).

State capture is a virtual privatization of the state, or rather privatisation of certain state functions. In some countries (e.g. Russia) a reverse process has also been observed – when government institutions are used by politicians to extract undue advantages from businesses.¹¹

Forms of state capture

Business (state) capture. Reflects corruption related processes when business entities subjugate state institutions to their private interests. This process has two dimensions: on the one hand, businesses pay il-

legitimately in order to shape the business environment by influencing legislation or other regulations. On the other hand, businesses could illegitimately pay state officials for biased enforcement (or non-enforcement) of law and regulations irrespective of the existing legislation. The former type of capture is contained in the most well-known definition – of Hellman, Jones and Kaufman elaborated during the analysis of BEEPS (1999). State capture is defined as a set of activities of individuals, groups or firms, both in the public and private sectors, which influence the formation of laws, regulations, decrees and other government sources to their own advantage, as a result of the illicit and non-transparent provisions of private benefits to public officials. The ability of captors to transform laws and change the regulatory framework in their own interest is provoked by their better chances to succeed in a competitive environment where innovation, efficiency and competitiveness determine profit margins. Within this concept three types of corruption relationship between the state and private firms are distinguished: **influence**,

Business capture	The active side of capture (captors) are business entities which use different forms of corruption to influence legislation affecting the business sector and other social areas and the implementation of legislation and rules in order to acquire privileged status.
Government/ political capture	The active side are state institutions and/or political networks/parties. Typically captured are business structures which ensure kickbacks after being provided with contract assignments (procurement or other) by institutional actors. The incentive for captors is the appropriation of corruption rents. The incentive for the captured business structures is part of the corruption rent and their eventual privileged position in a given market.
Judiciary capture	The active side would be networks of judiciary officials who use their discretionary power to appropriate corruption rents and sell their services to the executive, to the business sector or to organized crime. This type of capture would be possible in cases when the judiciary is relatively independent from the executive and the legislative (e.g. once elected/appointed, including by the executive and/or the legislature, magistrates have immunity for a certain period of time).
Black economy capture	The active side are typically organized crime groups who capture state institutions (typically the judiciary, but also the executive) in order to ensure systematic violations of the law and regulations for conducting black sector activities (on a large scale) and launder the profits.

¹⁰ Furthermore, prevalence of capture related form of corruption could show a mass phenomenon which could be randomly distributed among actors (pointing to different forms of corruption) and not concentrated at specific actors (capture).

¹¹ See Yakovlev, A. (2006). The evolution of business – state interaction in Russia: From state capture to business capture? *Europe-Asia Studies*, 58(7), 1033-1056.

administrative corruption and state capture.¹² Each of them has specific characteristics which are important for the understanding of the mechanisms of the principal-agent interaction. Influence, or lobbying as is commonly known, represents a firm-state relationship in which a private interest becomes an agent of influence relying mainly on the firm owner's ties, size, history of repeated interaction with state officials to persuade the authorities (the principal) to act in their private interest. Hence, relations are determined more by power status, rather than by illicit transactions. **Administrative corruption**, on the other hand, is the act of making private payments to public officials to deliberately distort the enforcement of regulations. In this case, these officials act as a tool of the private interests without directly influencing the rule-making procedures.

The latter type of capture refers to the deliberate distortion of the execution of (externally) prescribed rules and could also be regarded as a **specific type of business state capture** in cases it is conducted in a **comprehensive and systematic** way and results in comprehensive "coverage" of the needs of a given actor. This type of capture ensures preferential treatment not through the content of the laws but through to the capacity to systematically violate (block) their enforcement. Such actors take advantage of the state's preferential treatment. The victims of this type of state capture are all kinds of institutions including the judiciary, regulatory agencies, state-owned companies and other executive bodies.

Advantaged and privileged actors could, obtain through corruption undue advantages for society and the market, and extract **corruption rents**. In addition, captors achieve (in most cases) a "free rider" status, which enables them to:

- Acquire monopoly status in a given sector;
- Effectively counter attempts to limit their market power;

- Have privileged access to public resources and effectively block attempts to be deprived of this privilege;
- Be able to ensure legal advantages by modification of rules and legislation;
- Be able to control media and influence public opinion;
- Block investigations or court proceeding against their actions or business.

Two regional case-studies, namely the Middle East and Central and Eastern Europe, exemplify the vulnerability of countries in transition to state capture pressures. Although most of the countries in the two regions have made some progress in adopting formal democratic and market economy institutions, these are still seen as functioning in a particularistic manner (benefiting some at the expense of all), rather than following universalistic principles of public goods provision.¹³ The accumulation of social injustices pushed people to resort to vertical accountability measures in the form of street protests, as mechanisms for horizontal accountability between institutions have failed to provide good governance.¹⁴

Government and political capture. These are corruption related processes through which state officials (or networks) take hold of business entities in order to extract corruption rents. Similarly, political parties could subjugate the institutions of the state and use them to extract corruption rents.

The active role of captors in these cases are not private interests but public officials, networks of officials or political parties. In these cases, there could be two main objectives:

- 1) to extract corruption rents form select sectors (appropriated by officials at certain positions in the hierarchy) or in the course of implementation of state-funded projects. Captors pay in order to ensure privileged position of select business

¹² Hellman, J., Jones, G., & Kaufmann, D. (2000). *Seize the state, seize the day: State capture, corruption and influence in transition*. Washington: World Bank Research Working Paper.

¹³ Pippidi, A. (2014). *The Anticorruption Frontline*. Barbara Budrich Publishers, Berlin, 2014.

¹⁴ Brun, D.A., and L. Diamond (2014) *Clientelism Social Policy and the Quality of Democracy*, Johns Hopkins University Press, 2014.

- actors and force the sharing of profits;
- 2) to extract funds from businesses to be used for political purposes (e.g. in election campaigns).

In general, four types of state capture strategies can be employed: clientelism, predation, fusion and exploitation.¹⁵ They differ by the mechanisms used for obtaining control over the state. They are also heavily influenced by the starting conditions, as exemplified in the case of SEE countries. In Bulgaria and Romania who belonged to the former Soviet Union block state capture has been characterised by the transformation of political into economic power through the process of privatisation, and the use of the state resources through public procurement and concessions to strengthen monopoly positions. In the countries of the Western Balkans, this process has been heavily influenced by ethnic divisions and the newly emerging nation states. Political leaders riding on guaranteed ethnic support and on their role in the process of re-starting nation building have leveraged their support to monopolise (state) economic resources.

Clientelism involves the competition for power and the realization of this power through a network of relations between the (political) elite and its supporters via the distribution of rents. Clientelism can be characterized as a system within the system. The extracting of benefits here is tightly related with sharing some of them to serve the purpose of maintenance of the position held. In this respect, clientelism has a structural dimension, in which capital accumulation, bureaucratic rationalization, interest intermediation and political participation are interwoven. Some authors have also given the term a positive spin saying that clientelism could be seen as the necessary “lubricant” for improving administrative efficiency based on legitimate demands for the transformation of socio-economic structures.¹⁶ Rents in clientelist systems

are distributed not among the whole of society, but within a certain group that is either strong enough, large enough or could be easily manipulated to serve the purpose. Participants in these group are usually people highly dependent on what the captors provide as a rent. Usually these are people from the poorer layers of the society, or ones with lower education.¹⁷

Fusion refers to the merger of a political party and the state that practically allows the party to control and to extract rents through the state. This strategy also relies on rent distribution but is not characterized by competition for resources. It could be most easily illustrated by former communist regimes in Central and Eastern Europe (CEE). Here, the power and influence of state institutions are guaranteed only formally, but in reality are under the control of a single actor (a political party). The ruling elite distributes rents contingent on societal acquiescence and lowers the risk of being voted out of power by effectively eliminating the opposition.¹⁸

The strategies of clientelism and fusion are in contrast with those of **institutional exploitation and predation**, where captors are not involved in resource allocation for buying support from interest-groups or large sections of the population. Instead, they rely on usurpation of state institutions for the benefit of well-vested individuals. In the former case, institutions become only tools designed specifically by private interests that allow direct extraction of benefits and prolong the status-quo.¹⁹ Institutions are hollowed-out from power and influence but remain as a façade for distracting the public from the corrupt practices in government. Predation, on the other hand, involves the shrinking of the state institutions to a minimum in order to allow a full control of the state by few individuals.²⁰ By eliminating competition fully, rulers are then able to monopolise resources as many apt

¹⁵ Grzymala-Busse, A. (2008). Beyond Clientelism: Incumbent State Capture and State Formation. *Comparative Political Studies*, April 2008 vol. 41 no. 4-5 638-673.

¹⁶ Kawata, J. (2006). Comparing political corruption and clientelism. Aldershot, Hampshire, England/Burlington, VT Ashgate.

¹⁷ Norlin, K. (2003). Political corruption: Theory and evidence from the Brazilian experience. Thesis (Ph.D.), University of Illinois at Urbana-Champaign, 2003.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Sidel, J. (1999). Capital, coercion, and crime. Stanford, CA: Stanford University Press.

examples have shown in Africa, the Middle East and Asia.²¹ The public institutions in such a social setting serve as bureaucratic apparatus to guarantee the full loyalty and the elimination of potential resistance to the strategy of resource extraction.

While initial theoretical interpretations have been²² that state capture is a means by which powerful private firms capture state legislative, executive and judicial apparatus to shape laws, policies, and state regulations to their own advantage, it is possible that this phenomenon is not only a self-serving means but a result from the governance environment where it occurred and where it thrives.²³ This hampers the systematic analysis of the problem, for state capture is a path dependent phenomenon that is not determined by a profit maximizing solution, but by the economic and political situation in a specific country.²⁴

In some CEE case studies, the direct correlation between political environment and the prevalence of state capture is explained by the concentration of economic power in a few well-connected individuals.²⁵ Another explanation is the lack of working checks and balances in the structure of government allowing for the executive to become disproportionately more powerful than the other branches.²⁶ Hence, state capture is not a foretold outcome but a tool for

private companies in furthering their interest. Under the conditions of weak enforcement of property rights and an oligopolistic market structure, state capture could become the most efficient profit-seeking strategy. If legal guarantees for one's property do not exist, and property relations are regulated mostly by informal agreements between private firms and state authorities, the captor firm is forced to continue the illicit payments to protect its assets and market interests, thus reinforcing governance deficits.²⁷ In this way, capturing institutions becomes yet another variable in the investment function, in which the prevailing institutional conditions predetermine the appetite of a company for additional investments.²⁸

Alternatively, increased openness of the economy, i.e. larger role for trade and foreign investment, could reduce political corruption and state capture.²⁹ Closed economies create conditions for oligopolisation of the economy and preferential treatment for the well-connected private firms.

One of the most prevalent practices for capturing the state is through illegitimate **political party financing**, which contributes to the symbiosis between political and economic interests. An apt example is the creation of strong clientelistic ties between the major political parties and their regional bases of support.³⁰

²¹ Jackson, R., Rosberg, C. (1982). *Personal rule in Black Africa*. Berkeley: University of California Press.

Iroghama, P. (2005). *Bandits or rulers? Sources of perceived political corruption in sub-Saharan Africa*. Thesis (Ph.D.), University of Texas at Dallas, 2005.

²² See for example Hellman, J., Jones, G., & Kaufmann, D. (2000). *Seize the state, seize the day: State capture, corruption and influence in transition*. Washington: World Bank Research Working Paper.

²³ Klimina, A. (2009). *Toward an Evolutionary-Institutionalist Concept of State Capture: The Relevance of Kaleckian Analysis of Non-Equilibrium Dynamics*. *Journal of Economic Issues*, 43(2): 371-380.

²⁴ Ibid.

²⁵ Omelyanchuk, O. (2001). *Explaining State Capture and State Capture Modes: the Cases of Ukraine and Russia*. Paper presented in the seminar of the Stasiuk Program on Contemporary Ukraine, Canadian Institute of Ukrainian Studies.

²⁶ Ibid.

²⁷ Ickes, B., Gaddy C. (2005). *Resource Rents and the Russian Economy*. *Eurasian Geograph and Economics* 46, 8 (2005): 559-83.

Yakovlev, E., Zhuravskaja E. (2006). "State Capture from Yeltsin to Putin" Working Papers w0052. Moscow: Centre for Economic and Financial Research.

²⁸ Kalecki, M. (1954). *Theory of Economic Dynamics*. New York and London: Modern Reader Paperback. Kalecki, M. (1968) *Trend and Business Cycles Reconsidered*. *The Economic Journal* 78, 310 (1968): 263-276.

²⁹ Cox, M. D. (2002). *Assessing the impact of trade, foreign direct investment, and foreign aid on political corruption*. The University of Alabama.

³⁰ Gërzhani, K., Schram, A. (2009). *Clientelism and Polarized Voting: Empirical Evidence*. *Public Choice*, 305-317.

Political parties are often the main tool for capturing institutions via wide-spread nepotism guaranteeing loyalty, on the one hand, and promoting the personal interests of a large group of people, on the other.³¹ What distinguishes corruption and clientelism is that the former is individual strategic behaviour, while the latter is a social structure. Clientelism can occur on its own, but usually they go together, especially in the environment of post-communist countries.³²

The power that the ruling political parties receive in CEE is so great that its structure overlaps with the state structure. Hence, the state structure reflects the operation of the party, whose primary goal is to preserve its electoral position. This leads to the replacement of experts in senior positions in state-owned companies or in government institutions with party members, whereas appointments are driven by party loyalty rather than merit.³³ Moreover, rent-seeking behaviour by politically linked private interests affects the independence of party funding bodies, which distort the business environment and skew the process of market liberalization and privatization to benefit third parties. The fusion of corporate and party interests provides opportunities for the captors to extract goods, to consolidate their ruling position and to abuse their power. Along with the power that the politicians obtain through their posts, their position is also supported by the influence they have over state-owned companies.

The discussion of the most common forms of state capture indicates that there are two distinctive goals of the capture process: control over power and control over resources. In this sense, the other two identified forms of state capture are extreme cases as they refer to controlling the highest independent state power, the judiciary, and the most lucrative segments of the economy:

Judiciary capture. Processes through which parts of the judiciary (or networks) use their discretionary

power to extract corruption rents from the business sector and/or public institution actors. This provides ultimate control or capture of the democratic institutions' decisions, as courts control both the commercial and the governmental turnover from ownership to public procurement to privatisation decisions. Hence the capture of the judiciary and the media (often referred to as the fourth branch of power) is considered the ultimate prize for captors, as it allows them the highest order of control.

Black market capture. Processes through which organised crime structures capture those public institutions which should counter their illegal activities in order to conduct business-style activities (smuggling, drugs, human trafficking, organised crime, etc.). There can also be a reverse situation, in which powerful captors use government resources to control lucrative grey or black markets.

Measurement of state capture

State capture diagnostics areas

State capture is – to a large degree – a hidden phenomenon and is closely connected to governance mechanisms. If present, it reaches top level officials in the executive, judiciary and the legislative. It is therefore difficult to directly explore state capture phenomena. Rather, the initial focus should be on **major outcomes of state capture in critical sectors and zones.**

The approach outlined below is incremental. Its first target would be the **mapping of the most common state capture critical zones** (procurement and market concentration). Depending on the results further research would focus sequentially on captured institutions and prevalence of state capture mechanisms/practices.

³¹ Pesic, V. (2007). State Capture and Widespread Corruption in Serbia. Center for European Policy Studies Working Document.

³² Kotkin, S. Sajo, A. (eds.) (2002) Political Corruption in Transition: A Skeptic's Handbook. Budapest, Central European University Press.

³³ Ibid.

An important characteristic of **initial state capture diagnostics** is that it should be **based on sectors and/or institutions**. Macro level state capture assessments would be possible when the mapping by sectors and/or institutions has produced a more detailed review of the phenomenon.

Regarding the **scope of the diagnostics** (countries to be included) a differentiation based on the **level of development** would be necessary. The more primitive forms of state capture which are fairly common in less developed post-communist economies and societies differ substantially from the more sophisticated forms of capture in more advanced societies.

One of the existing approaches to the evaluation of some state capture forms has been elaborated by Hellman, Kaufman and Jones and includes estimating the prevalence of companies engaged in capture activities (paying officials to influence changes in legislation and other rules).³⁴ Two measures have been constructed: 1) impact measure of the extent of the capture economy defined as the share of firms in each country which report a direct impact on their business from the purchase of laws, decrees and regulations by firms through private payments to public officials; 2) behavioural measure that identifies captor firms; those that report having made private payments to public officials for the purpose of influencing the contents of laws, decrees or regulations. Based on this information, an assessment (index of capture) is made reflecting the extent businesses are affected by:

- the sale of parliamentary votes on laws to private interests;
- the sale of presidential decrees to private interests;
- central bank mishandling of funds;
- the sale of court decisions in criminal cases;
- the sale of court decisions in commercial cases;
- illicit contributions paid by private interests to political parties and election campaigns.

While these effects of state capture fit the elaborated concept, at least one principle issue remains: the diagnostic method rests on the assumption that capture is more or less a mass phenomenon both in terms of the process and in terms of its results and effects. While capture has an impact on many aspects of the economy, governance and society at large, capture and captors are not a mass phenomenon. In this respect diagnostics should not bypass the driving forces of capture (the captors) and should be able to locate several aspects of state capture:

- Identification of captors;
- Systematic “free rider” behaviour.
- Prevalence of capture mechanisms and results;
- Prevalence of capture effects (results from the operation of capture mechanisms, e.g. price irregularities, lobbyist legislation, etc.).

State capture risk zones

The principal risk zones for state capture that would be relatively easy to assess (based on big data analysis instruments) are procurement and market concentration.

State capture in **procurement** could be analysed by sectors and would characterise a situation when:

- Companies or groups of companies concentrate (attract) predominant volume of procurement in a given market on a systematic basis;
- Companies or groups of companies have exceptionally high success rates in procurement tenders on a long term basis;
- Changes of government do not lead to substantial changes in the successful bidders in terms of final beneficial owners in a given procurement market.

Once some elements of the above situation are identified, further research would be necessary to explore what mechanisms (means) of state capture have been deployed: political corruption, legislative corruption (favourable amendments in legislation),

³⁴ Hellman, J., Jones, G., Kaufmann, D. (2000). *Seize the State, Seize the Day. State Capture, Corruption, and Influence in Transition. Policy Research Working Paper 2444. The World Bank.*

blocking of the activities of control institutions (oversight bodies, tax and customs administration, etc.), judiciary corruption (blocking investigation, prosecution and court efforts to identify and sanction violation of laws), or a combination of all.

State capture resulting in **non-market driven concentration of monopoly power** should also be explored by sectors. State capture in this respect would include:

- Existence of sectors with long standing monopolies and/or cartels;
- Failure of government oversight bodies to identify and sanction non-market concentration of monopoly power;
- Deliberate government or legislative activity facilitating the establishment or continuing existence of monopoly power concentration;
- Failure of law enforcement to sanction/counter monopoly power concentration or use of law enforcement to undermine competition.

State capture resulting in continuing **“smooth operation” of big black and grey markets** (drugs, smuggling, trafficking of people, VAT and other types of tax fraud, substantial volume of organised crime operations). As these are highly lucrative markets, captors often either originate or use their captive power to also control grey or black financial flows too.

Captured public institutions or institutional areas

A captured public institution could exist in two general situations:

- 1) **Institutions which are critical in countering different types of violation of the rules of the game** (e.g. fraud, corruption, monopoly, etc.) that enhance various forms of state capture. In this respect critical institutions that could be targeted are related to procurement, competition, enforcement of industry and trade standards,

tax administration and the judiciary. The latter is the ultimate checks and balances institution in a democratic setting, which makes it the ultimate prize for captors.

- 2) **Institutions with important controls or other social functions, which have been “privatised” by their respective officials.** This situation is tolerated by the government as these institutions are also part of the state capture mechanism. The main indicator in this respect is the level of institutional corruption and respectively of corruption pressure associated with captured institutions. Common problematic institutions in post-communist countries are traffic police and other police departments, customs, some parts of the health care system and others.

A captured institution is one which is effectively privatised by its officials. In most cases this includes two specific institutional situations: 1) rampant administrative corruption involving lower level officials; 2) corruption transactions between the different levels of management in the public institution. As a result, higher levels of management “offer” the services of their institution and would be inclined to cooperate in cases of capture, while lower level officials offer their personal services to private actors (citizens and companies). In this way continuous rampant administrative corruption paves the way to state capture.

An instrument that could be used in the diagnostics of this type of situations is **MACPI**.³⁵ The instrument focuses on corruption pressure and corruption mechanisms at the **level of public institutions**. It evaluates the level of corruption risk, the prevalence of corruption risk related interactions inside the public institution and the existence of anticorruption policies. In this respect high corruption risk in combination with intensive corruption related internal transactions of officials and lack of effective anticorruption measures is the **indicator of a captured institution** (either privatised by insiders and offering corruption services or captured by outsiders to protect their interest).

³⁵ Stoyanov, A., Gerganov, A., Di Nicola, A. Costantino, F. (2015) Monitoring Anti-Corruption in Europe. Bridging Policy Evaluation and Corruption Measurement. Sofia, Center for the Study of Democracy.

Measuring state capture in the security sector

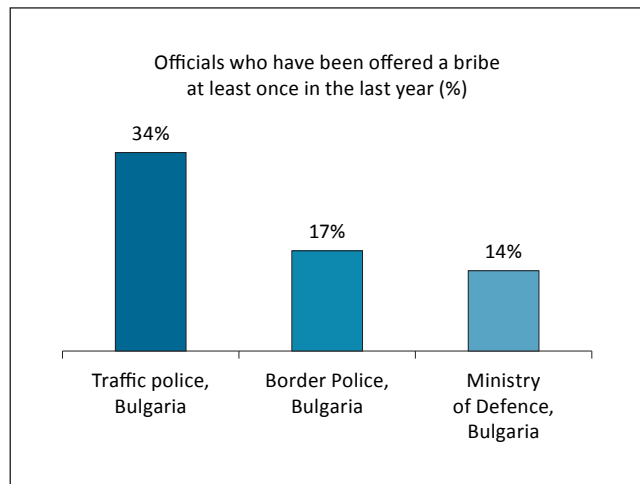
MACPI has already been implemented in several security sector institutions in Bulgaria (Border Police, Traffic Police and Ministry of Defence) and results have shown that it both identifies existing corruption risk zones, the main activities associated with specific corruption transactions and has been able to differentiate between institutions. Officials readily report cases when they have been offered bribes (see figure below) and this is an important indicator of intra institutional corruption transactions.

The policies and institutional measures assessed have shown that many activities which are associated with high corruption risk (e.g. procurement) are not covered by specific anticorruption measures, for others like border check points, measures like video surveillance have turned out to be relatively easy to bypass and in cases when violations are registered, officials are rarely sanctioned. Corruption pressure, especially for Traffic Police is very high; it comes not only from citizens, but also from superiors, i.e. some internal organization to use the institution as a corruption service provision vehicle is present. Overall, the corruption risk assessment part of the instrument directly provides multiple **capture assessment indicators** for the security sector.

The use of MACPI as a security sector capture measurement instrument needs however to be combined with anticorruption policy implementation assessment. **Corruption and capture aspects of the instrument** would be by-products in the anticorruption policy implementation assessment. The main reason why diagnostic needs a dual focus is experience with acceptance of the instrument in public organisations: no public organisation is interested in in-depth analyses of its corruption vulnerability and exposure to corruption transactions. It would therefore be **practically impossible** to implement state capture assessment methodology at the public institution level, if only corruption and institutional capture are focused. The use of MACPI is generally oriented towards assessing anticorruption **policy implementation**. It starts with assessing

corruption risk and vulnerability in order to map existing anticorruption policies in public institutions including security sector. While the corruption risk and vulnerability part have direct connection with state capture diagnostics, the anticorruption policy assessment has direct correspondence with the practical needs in most public institutions.

Figure: Corruption risk in public institutions (2015)



Source: MACPI, CSD 2015.

The MACPI methodology uses a **combination of tools** including desk research, in-depth interviews (IDIs) with experts and representative quantitative surveys among employees. This combination of methods allows the **identification of gaps** in the institutional anti-corruption policy setup, and **assesses the real implementation and efficiency** of existing anticorruption policies as well as corruption pressure on employees from outside and from inside the public organization. The principal **indicators** distributed by methods are as follows:

With respect to institutional capture diagnostics, the following **main groups of indicators** need to be assessed:

- Corruption risk zones. These are activities where discretion could transform into corruption transactions (given the interest of clients and officials and the absence of effecting counter measures);
- Level of outside corruption pressure;

Table: Indicators distributed by methods

	Desk research	IDI	Online survey
I. Assessment of corruption vulnerability and corruption risk			
1. Activities of the public organisation	X	X	
2. Identification of anticorruption policies	X	X	
3. Assessment of corruption interest (corruption zones)	X	X	
4. Assessment of outside pressure (proposals to initiate corrupt transaction)			X
5. Assessment of outside pressure (attempts to avoid rules)			X
II. Assessment of the implementability of anticorruption policies			X
6. Practical ease of implementation			X
7. Ease of evasion			X
III. Implementation of anticorruption policies			
8. Awareness of policy			X
9. Defined system of control			X
10. Implementation of control			X
11. Application of sanctions			X
IV. Effectiveness of anticorruption polices			
12. Estimated potential effectiveness			X
13. Susceptibility of officials to corruption			X

- Corruption pressure associated with specific activities;³⁶
- Prevalence of deviant behaviour of clients of the public institution;
- Existence of internal corruption transactions (between officials at different levels);
- Overall coverage of corruption risks by specific anticorruption measures and policies.

High corruption risk, high corruption pressure, existence of insider corruption transactions, high prevalence of deviant behaviour and low coverage of risk with effective anticorruption policies would represent the theoretical model of a captured institution. This model could serve as a **reference criterion in assessing the capture of security sector institutions**.

One of the important advantages of using an **online survey** is the relative ease of ensuring anonymity. The latter is crucial for eliminating bias and ensuring reliable information, especially in view of the sensitivity of the topic and the specific questions. Anonymity is also ensured by substantially reducing demographic questions (only gender and length of work experience in the organisation) and keeping the online database on the server of the implementing institute.

With respect to **sampling**, since the online diagnostics focus on a single organisation, ensuring random selection of respondents is relatively easy. A list of all employed officials is always available. The recommended method of sample selection is simple random sample. In this respect two scenarios are most common:

³⁶ It should be especially noted that responses of officials cover pressure exercised on them by clients. This ensures relatively high level of openness in responding. This aspect of corruption risk should be triangulated with other surveys which map corruption pressure exercised by officials towards clients.

- Sampling of small public organisations (50-100 employees). The recommended sampling model in these cases is an exhaustive survey of all employees.
- Sampling of bigger public organisations. The recommended sample in such cases is to ensure a sample size of about 400-500 employees. The reasons for such a recommendation are practical: the stochastic error is reasonable and this number of surveyed officials does not present a substantial problem (time and effort) for the cooperating organisation.

Regarding triangulation of diagnostic results other data on corruption (Eurobarometer or other surveys) should be used to compare assessment of citizens and businesses (as clients) with assessments of public officials in the surveyed public institutions.

Towards a state capture index

The discussion above provides a base for further work towards constructing a state capture index. This would entail the combination of existing measures of state capture and corruption with newly designed monitoring tools, such as MACPI. This should aim to enable the encompassing of:

- the different forms of capture (business, government, judiciary);
- the risk zones: public procurement, market concentration;
- the key target institutions of state capture: security sector, control and compliance bodies, prosecution, courts, etc.

The next steps towards achieving the goal of constructing an index measure of state capture should be the refinement of the provided model of state capture in this paper, its populating with data and indicators, and finally, the testing of the index components vis-à-vis existing measures of corruption and state capture.