

Companion Reference Document

Corporate Capture of the State: Obstacles to and Opportunities for Strategic Action

A focus on the Global South and the Energy Transition

APRIL 2024





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APRIL 2024

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1.

READING GUIDE

1.

READING GUIDE

The purpose of this companion reference is to accompany a separate, main document in which we discuss the key findings of Empower’s global horizon scan about the major challenges, opportunities, and strategies for the corporate accountability movement to address and stop the corporate capture of the State, particularly in the Global South and with a focus on the energy transition. In that main document, we elaborate on the concept of corporate capture, which differs from similar terms such as the more commonly used “State capture.” Readers interested in a deeper discussion of the meaning of corporate capture should refer to that document, where we highlight methodological challenges for the analysis of capture and our key findings. Conversely, in this companion document, we present and analyze a much more comprehensive list of challenges and gaps, as well as opportunities, strategies, and innovations, which were synthesized for the results presented in the main document.

In this companion reference, readers will encounter numerous facets of corporate capture encountered during a wide-ranging horizon scan conducted between July 2023 and January 2024. The first chapter lists and discusses the challenges posed by capture, alongside the gaps in current implementation and policy. In the second chapter, we identify opportunities for intervention, along with existing strategies and innovations deployed to counter corporate capture, many of which have potential for replication elsewhere. The second chapter also compiles the organizations leading the fight against capture, primarily civil society organizations in or working in the Global South. Each chapter concludes with specific sections dedicated to corporate capture of the financial sector and the energy transition.

While divided into two chapters, this companion document is not necessarily best read sequentially. Rather, it will be easier for readers to freely navigate and jump (Ctrl+F) from one section to another, depending on their interests. To locate the topics covered, readers should refer to the index at the beginning, which outlines the chapters and their sections. Please note that this document does not follow a strictly argumentative sequence; instead, we have organized it so as to progress from the most abstract (towards the top of each chapter) to the most concrete (at the bottom of each chapter).

We also suggest to readers that, if they find themselves intrigued by a key finding in the main document and wish to delve deeper, they should refer to the corresponding section in this complementary document, where they will find greater detail and, in some cases, specific cases examples. For instance, if, after reviewing the main document,

the reader is particularly interested in the challenges posed by the corporate capture of the energy transition, they can turn to the corresponding section in the chapter on challenges and gaps in this reference document.

The objective of this companion reference is to delve deeper into the topics that were outlined in the primary document. Again, our intention is not for this document to be read from beginning to end; rather, it serves as an extensive catalog of the main manifestations, challenges, gaps, opportunities, and strategic innovations related to the corporate capture of the State, especially in the Global South. At Empower we aim not only to offer an overview of the main challenges presented by corporate capture but also to shed light on the multiple ways that, as a corporate accountability movement, we can combat it.

1.1 About Empower

Founded in 2013, Empower, LLC¹ is a U.S.-incorporated, Mexico-based, worker-owned and worker-governed social venture that specializes in strategic research, business intelligence, due diligence, and civil society capacity building. Our social mission is to improve corporate transparency and accountability by eliminating the strategic information gap between businesses and civil society stakeholders. We work exclusively for and with CSOs of different shapes and sizes,² such as NGOs, trade unions, worker and community-based movements, universities, and philanthropic organizations, primarily to build their information capacities to engage the private sector in order to improve business compliance with labor, human rights, environmental, and social responsibility standards.

Over the past decade, Empower has produced hundreds of strategic research products and other deliverables, including books, white papers, policy briefs, academic articles, and journalistic pieces, for more than 40 clients in 20 countries. We have worked in most Latin American countries, the U.S., several places in Europe, Oceania, the Middle East, North Africa, and Southern Africa, and we have contributed to work in other parts of the world.

As researchers, our work invariably employs a critical analysis of State capture, a follow-the-money approach, power mapping and analysis, tech-based information tools, and a mix of open and human sources to produce actionable intelligence for corporate accountability advocates seeking to enhance understanding, press advocacy strategies, or directly engage businesses. Our collective DNA includes experience as trade unionists, community organizers, attorneys, journalists, ombudspersons, regulators, and academics.

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² <https://empowerllc.net/en/social-commitment>



2.

CORPORATE
CAPTURE:
**CHALLENGES
AND GAPS**

2

CORPORATE CAPTURE: CHALLENGES AND GAPS

Between July and October 2023, Empower interviewed 24 individuals representing 15 civil society organizations, three businesses, and three policy-makers regarding the corporate capture of the State, of whom two-thirds are based in or work exclusively in the Global South (see [Chapter 4](#) for a detailed list of interviews). Simultaneously until January 2024, we reviewed hundreds of publications on this issue alone, of which over 200 were selected — the majority produced in the past five years — as works cited for this reference document (see [Chapter 5](#) for a detailed bibliography).

Regarding the challenges that corporate capture poses and the gaps preventing us from making systemic change, we asked interviewees the following questions so as to initiate free-ranging interviews:

Challenges

- What are the macro-trends with respect to the corporate capture of the State in major sectors of the economy? What is truly new and different about the patterns we are seeing today? How does the picture differ from region to region?
- The prevalence of State-owned enterprises is higher in the Global South than in the North. What specific challenges or dynamics, if any, have you noticed regarding corporate capture and State-owned or parastatal companies, or even entire sectors?
- What challenges are emerging in relation to developments in the finance sector, and around the energy transition, particularly climate finance and taxation?

Gaps

- Transparency has proven to be necessary but insufficient on its own to drive changes in corporate behavior. Stronger enforcement models are needed to regulate corporate conduct. What is the key set of global reforms needed to move the needle towards legal enforcement with teeth that would deter corporate abuse of power?

- There is an international conversation regarding the tension that exists between green economy efforts and anti-monopoly policy, for example. What gaps have you noticed regarding the corporate capture of energy transition efforts? What greenwashing risks should we be aware of in this regard?

The discussions we had and the readings that complemented them produced a robust list of challenges and gaps, as follows:

2.1 Capture is not codified into law, its behavior often legal

With few exceptions, “capture” *per se* is not codified into law.³ In other words, as a phenomenon, it is by omission often legal. What is legislated, regulated, judicialized, and often enforced are the blatant manifestations of capture and associated corruption addressed throughout this chapter. Bribery, nepotism, and certain instances of insider trading, to name a few, are examples of behaviors and practices generally prohibited by law. While these symptoms of wrongdoing may be proscribed and demand-side actors punished (e.g. the public official accepting the bribe), both the root cause (undermining the State for private or political interest), the supply-side actors responsible (e.g. the businessperson perpetrating capture), the less blatant behavior (e.g. lobbying), and its effects (resulting inequality, disenfranchisement, market concentration, etc.) often go untouched.

In this regard, the South African case is no exception. The Judicial Commission of Inquiry into Allegations of State Capture (also known as the Zondo Commission) focused on demand-side actors and symptoms, recommending new legislation, regulation, and prosecution. However, the supply-side actors — corporations and other private (non-political) actors, such as the Gupta family — largely avoided scrutiny. Arguably, this was the primary shortcoming of the Zondo Commission: there has been no institutional reform to regulate private actors.⁴

The absence of corporate capture from legal frameworks, for example, has caused some to question its validity as a concept since, well, it is often legal. According to ProDESC (Mexico), “More than capture, companies are developing legal frameworks that legitimize their actions. They have a symbiotic relationship with State institutions. They legalize corporate practices. Companies and regulators work collaboratively. For example, in Mexico the Agrarian Prosecutor has been ‘captured.’ In other words, it gives out permits that allow companies onto communal and indigenous lands without their consent.”⁵ “[The] process of defunding and capturing regulatory agencies, such as

³ Oscar Pineda and Daniel Castrejón, PODER, Interview on 31 July 2023.

⁴ Devi Pillay, Researcher, PARI, Interview on 4 September 2023; and, Representative of the management team, Centre for Applied Legal Studies (CALS) (South Africa), Interview on 21 September 2023.

⁵ Alejandra Ancheita, Executive Director, ProDESC, Interview on 29 August 2023.

those on environmental matters, results in them having fewer capacities to investigate and sanction abusive or illegal business activities.”⁶

A similar process is taking place in Brazil, where private interests seek to legalize their behavior. Since the Bolsonaro administration (2019-22), the Supreme Court has been deciding on how to determine the territorial boundaries of indigenous lands. Agribusiness and mining interests have advocated for reshaping and reducing these lands, effectively overriding a previously favorable decision for indigenous peoples from 1988. The regressive demarcation process, called the “Marco Temporal,” was ruled unconstitutional and decided in favor of indigenous peoples in September 2023; however, the Senate could still approve a bill and create a larger legal controversy.⁷

In Colombia and Brazil, extractive and agribusiness practices that harm the environment have become legalized, for example, essentially obviating the need to capture the lawmakers, regulators, and judges who previously were the downstream objects of capture. “From [the narratives promoted by the oil industry in Colombia justifying] the development of seismic exploration in Colombia, it is possible to uncover some of the mechanisms of corporate capture related to this activity, including the absence of regulations, the concealment of impacts, and the State’s lack of diligence in enforcing effective regulation.”⁸

The phenomenon of legality is not only generalized, but also occurs at the legislative level, primarily through lobbying. According to Conectas (Brazil), “An example [of lobbying by the agricultural sector within the National Congress] is Bill 2.159 regarding environmental licensing rules, which introduces an article that prevents banks from being punished for environmental crimes and infractions committed by enterprises they finance, which [in turn] would have resulted from lobbying by the Brazilian Federation of Banks (Febraban).”⁹

In addition to legalizing capture practices, soft law, norms, voluntary practices, and the like are also important avenues towards legality for supply-side actors seeking to capture the State. According to Sherpa (France), “The creation of ‘soft law,’ i.e. non-binding law, is another manifestation of this phenomenon of privatization of norms. As an instrument to make capitalism socially acceptable, soft law enables multinationals to define their responsibilities, either by ‘adhering’ to principles drawn up by States within a multilateral body framework or by producing soft law themselves, individually (codes

⁶ ProDESC, Interview questionnaire, 7 September 2023.

⁷ “Brazil’s Supreme Court Rejects the Marco Temporal, but the Fight for Indigenous Land Rights Continues,” Amazon Watch, 22 September 2023, <https://amazonwatch.org/news/2023/0922-brazils-supreme-court-rejects-the-marco-temporal-but-the-fight-for-indigenous-land-rights-continues>.

⁸ Fernando Vargas Valencia *et al.*, *Extractivismo y captura corporativa del Estado en Colombia: aportes contra la impunidad*, Fundación Heinrich Böll (Colombia), 2023, <https://co.boell.org/es/2023/05/04/extractivismo-y-captura-corporativa-del-estado-en-colombia-aportes-contra-la-impunidad>. Pg. 82.

⁹ Conectas (Brazil), Interview questionnaire, 21 September 2023.

of conduct, ethical charters) or within multi-stakeholder bodies. The ineffectiveness of these tools, which serve corporate communications and public relations functions more than victims' access to justice, has been widely denounced."¹⁰

2.2 Lobbying and money in politics

The twin challenges of money in politics and lobbying often occupy the top spots among corporate accountability advocates when asked to describe the manifestations and modalities of corporate capture. In 22 countries worldwide lobbying is legal, such as in the U.S. where it is protected by the 1st Amendment to the Constitution and regulated under the Lobbying Disclosure Act of 1995, which requires lobbyists to register themselves and disclose their federal-level activities.¹¹ In the rest, "lobbyism is justified bribery" and is either outlawed or simply unregulated.

Unregulated lobbying, which characterizes the vast majority of the Global South, implies unrestricted freedom to influence State actors. In these countries, the corporate capture of the State — at least through lobbying and political influence — occurs in a gray area. In a minority of countries, lobbying is recognized as corruption and is outlawed, which relegates it even more to the shadows.

A concomitant system is electoral politics, where corporations, individuals, and other actors contribute to candidates and parties, ostensibly as an extension of free speech protections, such as under the 1st Amendment in the U.S. However, even with regulation, money in politics can produce clientelism, corruption, procedural favoritism, hand-picked public officials, and other by-products that favor business interests but not democracy. Worldwide there are 12 countries where "there are no limits on contributions and no limits on what candidates can spend;" 12 where "there are limits on both contributions and on spending;" six "with limits on spending but not on donations;" two "with contribution limits but no spending limits: Finland and the United States;" and then "Mexico and Portugal, where all contributions go through parties and individual candidates don't take contributions."¹²

According to the Organization for Economic Co-operation and Development (OECD), when it comes to corporate capture through lobbying, the exceptions are greater than the rules.

¹⁰ "Handbook of Proposals to Regulate Multinationals", Sherpa, December 2021, www.asso-sherpa.org/hand-book-of-proposals-to-regulate-multinationals. Pg. 31.

¹¹ "Only 22 countries regulate lobbying at all: Australia, Austria, Brazil, Canada, Chile, France, Georgia, Germany, Hungary (though its law was repealed), Ireland, Israel, Lithuania, Macedonia, Mexico, Montenegro, the Netherlands, Peru, Poland, Slovenia, Taiwan, United Kingdom and the United States. The European Union also regulates lobbying. But not all these countries provide an online registry of lobbyists, and some provide very limited information." See: Libby Watson, "Influence Abroad: The state of global lobbying disclosure," Sunlight Foundation, 30 November 2016, <https://sunlightfoundation.com/2016/11/30/influence-abroad-the-state-of-global-lobbying-disclosure>.

¹² Paul Waldman, "How Our Campaign Finance System Compares to Other Countries," *The American Prospect*, 4 April 2014, <https://prospect.org/power/campaign-finance-system-compares-countries>.

Transparency related to lobbying activities remains limited. A more comprehensive approach to defining lobbying is necessary to help investors understand how companies' lobbying activities are aligned with their long-term sustainability pledges.

Certain actors that are influencing the policy-making process, such as think tanks and non-governmental organisations, are not always covered by transparency requirements and many activities are exempted, for example the use of social media as a lobbying tool.

(...) Political finance regulations are more robust if compared to lobbying activities, though loopholes and grey areas remain. (...) Third-party spending remains a challenge and can constitute a means of re-channelling election spending through committees and interest groups that are independent in name only. (...) Regulations on shareholder rights for publicly listed companies rarely include the approval of political contributions or lobbying expenditures. ...

Depending on how they are conducted, corporate political engagement activities can greatly advance or hamper progress in many policy areas. At times, there may be a monopoly of influence by those that are financially and politically powerful, and/or policies may be unduly influenced through covert or deceptive activities. (...)

Disclosure on political finance is greater than on lobbying, but loopholes remain in the regulation of private funding.

A cornerstone of transparency and accountability in political finance is requiring political parties and candidates to disclose information on their sources of funding to enable public oversight institutions to check the books and accounts of parties, candidates and donors. ...

Despite this higher level of transparency, a key challenge for countries is the regulation of private funding. Limiting private donations from foreign interests, corporations, state-owned enterprises or trade unions can reduce the extent of influence of single donors on the outcome of elections or on the process of policy making after election day. Yet, where bans on private



funding exist, a variety of techniques are often used to circumvent them. (...) Whereas electoral campaigns naturally involve the collection of voters' opinions and political advertising, how and the extent to which this is being done has dramatically changed. Recent evidence shows that spending on online political advertisements has increased significantly in recent years (...), particularly during the COVID-19 pandemic. Yet, regulation for expenditures on online campaigns is lacking in many countries.¹³



As Conectas points out — and Brazil is by no means the exception — oftentimes corporations form chambers of commerce and trade associations to engage in business politics. In other words, lobbying occurs directly and indirectly, on the books and off the books, in one form or another. “A [survey] showed that, between 2019 and 2021, transnational banks and investment funds invested more than R\$27 billion in companies that finance the Pensar Agro Institute (IPA), created by the agricultural sector to ‘defend the interests of agriculture and provide advice to the Parliamentary Agricultural Front (FPA),’ with ‘technical support for specific actions being processed in the National Congress, in addition to promoting interlocution with the Judiciary and Executive powers.’ According to the survey, this amount corresponds to the purchase of shares by sovereign wealth funds, loan concessions, debt renegotiations, and bond issues executed by soy multinationals, such as Cargill, ADM, and Bunge, and meatpackers such as JBS, Marfrig, and Minerva. Among the global financial groups investing in companies linked to the Institute are JP Morgan Chase, Bank of America and Citigroup and funds from BlackRock, Vanguard, and Dimensional.”¹⁴

2.3 Legal, regulatory, and judicial gaps

The presentation of the legislative and regulatory gaps in this subsection, given the heterogeneity of the challenges identified, owes more to the exclusion of these issues from other categories than commonalities among themselves. Notwithstanding, each of these gaps is important and worthy of attention.

2.3.1 Corporate liability and responsibility

Despite significant legal and normative developments in the field of business and human rights, as of January 2024 there has been woefully little progress insofar as

¹³ “Regulating Corporate Political Engagement. Trends, Challenges and the Role for Investors,” Organization for Economic Co-operation and Development (OECD), 2022, www.oecd-ilibrary.org/docserver/8c5615fe-en.pdf?expires=1697312870&id=id&accname=guest&checksum=A52107C7DB026D74F1782786F850FB3A. Pgs. 9, 10, 14, 20, 21, and 23.

¹⁴ Conectas (Brazil), Interview questionnaire, 21 September 2023.

new criminal liability for corporate-sponsored human rights violations and crimes, extraterritoriality (beyond 5-10 national laws with some extraterritorial applicability), and access to meaningful remedy for rightsholders. According to Paloma Muñoz of BSR, “Ideologically, and for many years, States did not believe in the concept of corporate responsibility because the private sector cannot violate human rights (an outdated view from the 1980s). That is, there is no human rights culture in State bodies with respect to corporate operations.”¹⁵

2.3.2 Customary international law / binding treaty

Stronger enforcement models — beyond much needed transparency — are required to change corporate behavior and regulate their conduct. For example, a report by Open Secrets (South Africa) emphasizes that, “[D]espite the power of global private financial institutions and their persistent role in financial crimes, there remains no customary international law or binding treaty to supervise financial institutions. Legal principles for corporate accountability, particularly for past crimes, lag behind those for holding individual actors to account.”¹⁶ It goes on to explain how, though some activities may be legal, whether by statute or omission, they can still lead to crimes. “In many of the cases considered in this report, the actions of the corporations do not technically constitute ‘crimes’. Many economic activities (for example, profit-shifting) are legal, and corporations will skirt the lines of lawfulness to extract as much value as possible while escaping legal obligations. However, the fact that a certain activity is ‘lawful’ does not mean that it cannot have unjust outcomes, or that the only economic crimes which exist are those already codified in law. Often, ‘lawful’ economic activity can contribute to heightened poverty and inequality, and can negatively impact [sic] human rights. Civil society groups can play a vital role in advocating for the state to develop the law where new economic crimes are needed, or to increase regulation around a certain economic activity. We must remain vigilant to ensure that the law is able to fulfill and protect constitutionally embedded rights.”

2.3.3 Implementation and enforcement of due diligence legislation

There is broad skepticism in the Global South about the implementation and enforceability of European supply chain due diligence and similar laws, which is twofold. On one hand, so as to avoid neo-colonial imposition, these laws must authentically adapt to each extraterritorial jurisdiction’s reality. A big gap is the scarcity of due diligence laws in the Global South to mirror those in Europe. A one-size-fits-all approach will not work. On the other hand, according to Alejandra Ancheita, “[Legal cases] under due diligence laws that bring litigation in the [host countries] can have greater harm prevention impacts and limit the practices of certain industries. For example, in ProDESC’s

¹⁵ Paloma Muñoz, BSR, Interview on 25 August 2023.

¹⁶ “Corporations and Economic Crime Report. The Bankers”, Open Secrets, November 2018, www.opensecrets.org.za/cecr-vol-1-the-bankers. Pg. 6.

Électricité de France case in Oaxaca, the company intended to conduct a ‘checklist exercise’ to say that it had complied with France’s due diligence law, but the litigation in Mexico opened Pandora’s box and ensured that the company took it seriously.”¹⁷

2.3.4 Judicial and procedural delays

In terms of access to justice, the expeditious determination of legal violations of human rights has been emerging worldwide. However, important gaps remain, including: the length of judicial processes during which time human rights violations continue to harm rightsholders; the lack of specificity in legislation — for example, how a European judge interprets whether a due diligence violation abroad is even a violation in the host country — often results in rulings favoring companies; and reforms at the federal or national level not being expeditiously codified and enforced at sub-national and local levels.¹⁸

2.3.5 Judicial interference

When rulings favor communities, corporations interfere to prevent them from being implemented. A clear example is the case of the Cerrejón company, owned by Glencore, in Colombia. Despite more than ten rulings in favor of water rights, food sovereignty, and other human rights, the company that violated these rights interfered with the judiciary to prevent them from taking effect. Another emblematic case in Colombia is the diversion of the Bruno Creek in La Guajira, a semi-desert area. Despite a court decision favoring the community and the environment, the company pressured the State with a lawsuit, taking it to international tribunals.¹⁹

2.3.6 Sponsorship of judicial events

Another way that companies exert pressure on court procedures and rules is by indirectly co-opting judges, including corporate sponsorship of judicial events — through which companies fund and actively participate in congresses, seminars, and courses for judges, justices, and ministers — and the payment of fees for speaking engagements at corporate-sponsored events.²⁰

2.4 Revolving door phenomenon

The revolving door is a primary example of how corporations capture the State. The Corporate Accountability Working Group (CAWG), an integral part of the International

¹⁷ Alejandra Ancheita, Executive Director, ProDESC, Interview on 29 August 2023.

¹⁸ Devi Pillay, Researcher, PARI, Interview on 4 September 2023.

¹⁹ Luisa Rodríguez Gaitán, Coordinator, Democracy and Human Rights Program, Heinrich Böll Foundation (Colombia), Interview on 11 September 2023.

²⁰ "Interferência de empresas no acesso da população à Justiça no Brasil é denunciada em Genebra", Terra de Direitos, 28 November 2017, www.terradedireitos.org.br/noticias/noticias/interferencia-de-empresas-no-acesso-da-populacao-a-justica-no-brasil-e-denunciada-em-genebra/22690.

Network for Economic, Social and Cultural Rights (ESCR-Net), defines this practice as “The movement of employees from the corporate sector to public regulators and other agencies, and vice versa, in the process undermining the impartiality of State agencies, facilitating corporate-friendly regulation and policy, lessening the application of existing regulations, and securing favorable corporate contracts with state agencies.”²¹ Essentially, it is the entry, transit, and exit of businesspeople through the State as public officials, and vice versa. The revolving door necessarily implies conflicts of interest, which are rarely declared as such. This has become normalized and the risks associated with a public official having previously worked for a company and potentially managing private interests from their position are rarely mentioned.²²

In our interviews, we found more mentions of the revolving door in the Global North than in the South, though there are countless instances worldwide. In Mexico, for example, two men personify the revolving door phenomenon, both connected to the multinational mining and transportation conglomerate Grupo México. Carlos Ruiz Sacristán, a public official for 25 years, including as Minister of Communications and Transportation, in one of his final acts in office, privatized Mexico’s railroads in 1997, granting the most strategic routes to a consortium led by Grupo México. Upon leaving his post, he joined the board of directors of Southern Copper Corporation, Grupo’s U.S. subsidiary. Similarly, Luiz Téllez Kuenzler was the chief of staff to Mexican President Ernesto Zedillo (1994-2000), where he prepared the railroad privatization together with Ruiz Sacristán, only to join Grupo’s board in 2001.²³

Somewhat differently, interviewees in South Africa mentioned that the revolving door can also occur between an influential political party, such as the African National Congress, its members, such as trade unionists, and the State. In this regard, the dynamic is less about public officials currying favor with companies in order to obtain jobs in the private sector and more about the revolving door between union leadership and the State, which ensures that these party adherents will not tackle State capture once in office.²⁴ Throughout this chapter we will address other instances of the revolving door and ways to address it.

²¹ “Manifestations of Corporate Capture,” ESCR-Net, n/d., www.escr-net.org/corporateaccountability/corporatecapture/manifestations-corporate-capture.

²² Luisa Rodríguez Gaitán, Coordinator, Democracy and Human Rights Program, Heinrich Böll Foundation (Colombia), Interview on 11 September 2023.

²³ The scholar Alejandra Salas-Porras provides a detailed account of a long list of national and foreign corporations through which high-ranking public officials circulated, including former President Ernesto Zedillo. The author highlights that, due to this movement between the public and private spheres, decisions made by political elites in Mexico are not crafted for the benefit of citizens but rather with an eye toward future rewards and positions they may occupy in the corporate power network. See: Alejandra Salas-Porras, *La economía política neoliberal en México. ¿Quién la diseñó y cómo lo hizo?*, Ediciones Akal, 2017, www.akal.mx/libro/la-economia-politica-neoliberal-en-mexico_46863. Pgs. 120-21.

²⁴ Representative of the management team, Centre for Applied Legal Studies (CALs) (South Africa), Interview on 21 September 2023.

2.5 Interlocking corporate directorates

The Project on Organizing, Development, Education, and Research (PODER) has made a significant contribution to the study of corporate capture, particularly through its focus on the phenomenon of corporate interlock, which refers to members of corporate boards of directors serving on multiple boards simultaneously, thus creating a network of multiple directors and interlocking boards. This phenomenon occurs worldwide and is a primary mechanism whereby corporations as a network form business associations to lobby, influence, and capture the State. One study examined the “global board interlock network, covering 400,000 firms linked through 1,700,000 edges representing shared directors between these firms.”²⁵

According to PODER, “The case of Mexico is especially flagrant. As of last count, 37 people own or maintain influence over 28% of the national economy through interlocking corporate directorships, the revolving door, and corruption, making it arguably the most unequal country on the planet. Since the 1960s one organization – the Mexican Council of Businesspeople – comprised of the owners of Mexican capital meets regularly with the president or his proxy to engage in a simple *quid pro quo*: the executive branch provides privileged information to the elite prior to announcing official decisions, for example about megaprojects such as the new airport or the recent oil and electricity privatization, in exchange for the business sector publicly expressing support for the president and his government so as to confer legitimacy. Essentially, in Mexico corporate capture has become institutionalized.”²⁶

In an earlier document, PODER expounds further:

[Corporate] interlock came to signify a social relationship linking members of the business elite, which by definition are those directors who have a more active and influential position with the national corporate network based on the number and quality of board seats that they occupy. Naturally, each director represents different interests, whether those of shareholders, management, or other economic, political, and social concerns external to the company. While all directors receive information about the company on whose board they sit, only those directors with multiple

²⁵ Frank W. Takes and Eelke M. Heemskerk, “Centrality in the global network of corporate control,” *Social Network Analysis and Mining*, 6, 97 (2016), <https://doi.org/10.1007/s13278-016-0402-5>.

²⁶ Benjamin Cokelet, “Fiscal Futures: The End of Sovereignty and the Influence of Corporate Power are Twin Challenges to Fiscal Governance”, International Budget Partnership, 20 Mars 2019, <https://internationalbudget.org/fiscal-futures-end-of-sovereignty-influence-of-corporate-power-twin-challenges-to-fiscal-governance>.

directorships are able to transmit this information through their interlock with other members of the network. (...)

Beyond presenting fresh data and social network analysis, PODER's contribution to the research about corporate interlock in Mexico and the role of the CMHN raises important questions about business politics, corporate governance, wealth concentration, and state capture and signals new areas of exploration for further study. In its own words, PODER concludes that, '[By] attributing importance to the direct and indirect presence of the CMHN in the RCM2009, we can evaluate the viability of the Council's leadership as an organ of business politics that generates collective action within the private sector. When approximately 47.4074% of the Mexican Stock Exchange is concentrated in such few hands, this alignment of interests is quite possible. Moreover, when such a small group has the capacity to influence 27.01% of national GDP, it is safe to speculate...that the CMHN enjoys the power to dialogue with the political sector and influence the public policy decision-making process, particularly regarding economic matters.'²⁷



²⁷ Benjamin Cokelet, "The Mexican Council of Businessmen: Business Politics, Elites, and Decision-Making in Mexico," Master's Thesis, New York University, August 2013, <https://poderlatam.org/wp-content/uploads/2014/12/CMHN-Business-Politics-Elites-and-Decision-%C2%ADMaking-in-Mexico-English-May-2014.pdf>. Pgs. 38, 39, and 42.

To a certain extent, given that it can be measured, interlocking corporate directorates offer unique insight into the black box of corporate decision-making and business politics. While we may not be at the table to eavesdrop on the conversation, we can identify the table, how it is set, and who is seated.

While corporate interlock is not inherently indicative of capture, it significantly facilitates collective corporate action by fostering communication and mutual trust among board directors. This often results in corporations presenting a unified front with shared goals or interests. Consequently, interlocking directorates provide corporations with the resources or linkages to maintain or increase their power, making it a common precursor to corporate capture.²⁸

2.6 Beneficial ownership

Corporate ownership writ large poses significant gaps insofar as tackling corporate capture is concerned. Property rights, banking and fiduciary secrecy, offshore banking and incorporation, fiscal loopholes, limited liability companies, other forms of private capital, and beneficial ownership opacity are among the challenges preventing us from answering a key question: Who benefits? If the corporate capture of the State is meant to benefit private interests, then whose interests are we talking about?

According to PODER, the challenges presented by complex corporate ownership and beneficial ownership opacity are numerous. “When analyzing large corporations, especially those with activities in more than one country, it is common to encounter complex corporate ownership schemes, composed of numerous corporate vehicles with different corporate purposes, often incorporated in more than one jurisdiction (or country). Even when companies are public (or have publicly-traded shares) and are based in a country with high corporate transparency standards, it is difficult to identify all the companies (or subsidiaries) that are part of and controlled by the holding company, which is the company required to provide consolidated information on the group’s operations. Complex corporate ownership schemes are increasingly common, not only to operate in multiple jurisdictions but also to reduce the tax obligations of a corporate group and/or limit the risk and liability (environmental, social, human rights) of investment in a specific project or asset. (...) It is important to note that incorporating a complex corporate structure is not illegal. However, the corporate veil and jurisdictions with lax regulations can be exploited by certain actors for the specific purpose of hiding, through numerous layers of ownership, those who control or benefit from a company.”²⁹

²⁸ Kees van Veen and Eelke M. Heemskerk, “Interlocking directorate networks”, in Reda Alhajj and Jon Rokne (Eds.), *Encyclopedia of social network analysis and mining*, Springer, 2017, https://link.springer.com/referenceworkentry/10.1007/978-1-4614-7163-9_274-1.

²⁹ Mariana Gutiérrez, Gina Chacón, Julieta Lamberti, and Omar Escamilla, “Los beneficiarios reales de las industrias extractivas en México. Minería e hidrocarburos,” PODER/Oxfam México, July 2019, <https://poderlatam.org/wp-content/uploads/2020/02/InformeBeneficiariosReales.pdf>. Pgs. 25-6.

In 2016, thanks to a massive leak, The Panama Papers blew the lid off of fiscal paradises worldwide. “The leaked data covers nearly 40 years, from 1977 through the end of 2015. It allows a never-before-seen view inside the offshore world — providing a day-to-day, decade-by-decade look at how dark money flows through the global financial system, breeding crime and stripping national treasuries of tax revenues. Most of the services the offshore industry provides are legal if used by the law abiding. But the documents show that banks, law firms and other offshore players have often failed to follow legal requirements that they make sure their clients are not involved in criminal enterprises, tax dodging or political corruption. In some instances, the files show, offshore middlemen have protected themselves and their clients by concealing suspect transactions or manipulating official records.”³⁰

Largely thanks to The Panama Papers, we now have a better understanding of corporate ownership, beneficial owners, who benefits, and how. That said, the 214,488 shell companies and other offshore entities named in the leaks are but a fraction of corporations worldwide. A problem of this size poses enormous challenges for identifying companies, let alone their owners. Though the U.S. Securities and Exchange Commission (SEC) identifies beneficial owners as those investors who own 5% or more of a company, it misses the larger picture: who are the physical individuals — the beneficial owners — that own any given company?

Throughout the 2010s, several organizations, including Open Ownership, Transparency International, and the Extractive Industries Transparency Initiative (EITI), have been engaging with dozens of governments worldwide to implement beneficial ownership reforms, including news laws and registries to disclose the true owners of corporations. This process has been slow. By 2022, 79 countries had beneficial ownership registration laws.³¹ However, a small subset — perhaps 15 at most — had implemented effective, transparent registries.³²

2.7 Privatization and public procurement

According to Philip Alston, the former U.N. Special Rapporteur on extreme poverty and human rights, “Privatization is a process through which the private sector becomes increasingly, or entirely, responsible for activities traditionally performed by government, including many explicitly designed to ensure the realization of human rights. It can take

³⁰ “Giant Leak of Offshore Financial Records Exposes Global Array of Crime and Corruption,” International Consortium of Investigative Journalists (ICIJ), 3 April 2016, www.icij.org/investigations/panama-papers/20160403-panama-papers-global-overview.

³¹ Andrés Knobel, “Beneficial ownership registration in 2022: developing countries lead the way,” Tax Justice Network, 15 December 2022, <https://taxjustice.net/2022/12/15/beneficial-ownership-registration-in-2022-developing-countries-lead-the-way>.

³² Oscar Pineda and Daniel Castrejón, PODER, Interview on 31 July 2023.

many forms, ranging from the complete divestiture of government assets and responsibilities to arrangements such as public-private partnerships.”³³ In this regard, a prime object of capture by corporations are the decision-makers who decide on privatization and procurement matters.

During the Covid-19 Pandemic, the public procurement of healthcare and medical equipment was on full display, as the wall traditionally separating the public and private sectors crumbled away. States sought to produce vaccines and protect their citizens as fast as possible, which often meant the “privatization of healthcare services/medical assistance; protection of intellectual property; lack of transparency in contracts related to healthcare services/medical assistance; [and] the diversion of emergency funds by the wealthiest 1% at the expense of people’s health and healthcare workers, most of whom are women.”³⁴

Corruption Watch in South Africa notes how capture focused on State-owned enterprises (SOEs) in the mining sector to reallocate resources from the public economy towards private interests, including in the energy and logistics sectors where the largest procurement deals took place. “The first 5-6 years of the work of Corruption Watch went to undermine these privatization efforts. I am not sure that market concentration necessarily leads to State capture, but it certainly doesn’t stop it. To some extent they are overlapping issues. We tried to address the problem through antitrust measures, which can serve to prevent further concentration, but I’m not sure that regulation is an effective weapon to unwind an already concentrated sector. The State capture is a political fight of many dimensions.”³⁵

Similarly, corporate capture not only targets SOEs for privatization or lucrative public contracts, but also works to undermine the State in other ways so as to increase dependency on corporations. According to Conectas, “Corporate capture is also [pressures] for the forced dismantling of the services provided by public companies and the widespread broadcasting of corruption scandals involving them to gain public support for privatization. This mainly occurs when the public company monopolizes the activity or when its market position tends to be greater than that of the private sector.”³⁶

Alston argues that “Most definitions of privatization are of limited utility, because they fail to capture the deeper processes of value transformation that are at play. Narrowly conceived, privatization involves full divestiture, through which ‘all or substantially all the interests of a Government in a utility asset or a sector are transferred to the private

³³ Philip Alston, “Extreme poverty and human rights. Report of the Special Rapporteur on extreme poverty and human rights,” United Nations General Assembly, 26 September 2018, www.undocs.org/en/A/73/396.

³⁴ “Corporate Capture of Our Healthcare Systems Derails Health Equity”, ESCR-Net, 9 August 2021, www.escr-net.org/news/2021/background-document-corporate-capture-our-healthcare-systems. Pg. 2.

³⁵ David Lewis, Executive Director, Corruption Watch (South Africa), Interview on 16 August 2023.

³⁶ Conectas (Brazil), Interview questionnaire, 21 September 2023.

sector', even if some form of governmental regulation or oversight is maintained. More broadly, the term can cover any private sector involvement in public service provision."³⁷

2.8 Narrative and ideological capture

A common thread across the interviews and literature — an original sin of sorts — is the ubiquitousness and acceptance of capture as an economic, political, and social norm. Interviewees often mention that economic elites have co-opted academia, science, electoral discourse, legislatures, broadcast media and print journalism, and other spaces that produce ideas, teach, argue, disseminate, and generally influence public opinion. The capture of academic institutions, for example, which is not well-studied save select examples,³⁸ involves corporations funding research that legitimizes their operations.³⁹

The impression is that neoliberal ideologies have “baked in” and normalized capture as a standard of political economy and doing business, and that narratives such as the rights of corporations, property rights, intellectual property rights, and so on run deep and contrary to transparency, accountability, and other reform efforts.

According to Conectas, “Through ‘ideological’ capture, companies have used the media, advertising, and the production of ‘scientific’ knowledge to disseminate green concerns or a supposed socio-environmental concern, even when their activities have been extremely damaging to the environment or to surrounding communities, or even when energy generated is entirely geared towards maintaining large carbon-intensive activities and companies, such as the agro-industry.”⁴⁰

2.9 International and multilateral spaces, and agenda setting

Part and parcel of capturing the narrative is, in turn, setting the agenda. International, multilateral, multi-stakeholder, national, sectoral, and virtually any space of dialogue, negotiation, and decision-making can be captured — at a minimum — ideologically. Corporations seek to control the generation of knowledge, concentrate communication mechanisms, sponsor events, and generally co-opt processes that affect their interests.⁴¹

³⁷ Philip Alston, “Extreme poverty and human rights. Report of the Special Rapporteur on extreme poverty and human rights,” United Nations General Assembly, 26 September 2018, www.undocs.org/en/A/73/396.

³⁸ “La Mafia de la Ciencia,” *Periodismo PODER*, 2019-20, <https://lamafiadelaciencia.poderlatam.org>.

³⁹ Luisa Rodríguez Gaitán, Coordinator, Democracy and Human Rights Program, Heinrich Böll Foundation (Colombia), Interview on 11 September 2023.

⁴⁰ Conectas (Brazil), Interview questionnaire, 21 September 2023.

⁴¹ Rosa Cañete Alonso, “Democracias Capturadas: El gobierno de unos pocos”, Oxfam/Clacso, 2018, www.oxfam.org/es/informes/democracias-capturadas-el-gobierno-de-unos-pocos. Pg. 17.

An example of this was denounced in October 2023 by the Latin American Platform on Business and Human Rights, following a United Nations convening in Chile. “We are highly concerned that corporate capture is increasingly a tool present in some settings of the [U.N.]; therefore, in response to the principles of transparency and accountability, it is necessary that the Working Group on Business and Rights Humans publish the origin of its funding and how it is implemented in its strategic agenda, including the development of regional and global forums.”⁴²

Similarly, the CAWG identified various forms of corporate capture in multilateral spaces, such as political and legislative interference, the revolving door phenomenon (where corporate employees become government representatives at the U.N., for example), and economic diplomacy in which States prioritize corporate elites’ interests over the rights of the population. In recent decades, corporate capture has been normalized through the discourse and institutions of multi-stakeholderism, which involves corporations in policy formulation and increases their influence in decision-making. In large part, this type of corporate capture has been driven by the dependence of multilateral institutions on private financing due to States’ failures to pay their contributions, earmarking funds to serve corporate interests, and falling tax revenues resulting from neoliberal policies.⁴³

2.10 Corporate philanthropy and CSR

Albeit not a focus of this horizon scan, several interviewees mentioned the philanthropic activities of corporate foundations, including Bloomberg, Gates, and Laudes at the global level but also domestic corporate philanthropies within individual countries, such as the Fundación Grupo México, that seem to enjoy elite access to States and international decision-making bodies. While such engagement certainly falls within the purview of foundations, the concerns surround the corporate philanthropy of some foundations for causes or organizations whose work harms human rights and the environment. Examples of worrisome interventions include territorial co-optation, manipulation of local communities, corporate social responsibility (CSR) programs, in-kind donations to politicians or political campaigns, financing of public works projects, etc.⁴⁴

⁴² “Declaración de OSC convocadas por la Plataforma Latinoamericana sobre Empresas y DDHH,” 16 October 2023, <https://poderlatam.org/2023/10/declaracion-de-osc-convocadas-por-la-plataforma-latinoamericana-sobre-empresas-y-ddhh>.

⁴³ Other examples include the International Emissions Trading Association (IETA), founded by the world’s largest polluters, and its influence within the United Nations Framework Convention on Climate Change. At COP25 in Madrid, the IETA’s meddling was such that CSOs formed the Kick Big Polluters Out Coalition precisely to keep corporations out of climate change agreements. Also, the World Economic Forum (WEF) provides corporations with preferential access to the U.N. system at the expense of States and public actors, weakening the mandate and independence of the UN. Similarly, the partnership between the U.N. Food and Agriculture Organization (FAO) and CropLife International — a trade association representing pesticide and biotechnology industries — could undermine the FAO’s ability to make independent decisions. Lastly, in 2017, the Office of the U.N. High Commissioner for Human Rights (OHCHR) signed an agreement with Microsoft in which the corporation offered 5 million USD to support OHCHR, which could compromise the OHCHR’s activities scrutinizing Microsoft. See: “Corporate capture of the United Nations,” ESCR-Net, 11 February 2021, www.escr-net.org/news/2021/background-document-corporate-capture-united-nations. Pg. 2.

⁴⁴ Luisa Rodríguez Gaitán, Coordinator, Democracy and Human Rights Program, Heinrich Böll Foundation (Colombia), Interview on 11 September 2023.

A classic example of detrimental CSR is the decade-and-a-half-long negotiation of a Global Tobacco Treaty (WHO Framework Convention on Tobacco Control) and how the tobacco industry sought to hinder its progress and interfere with public health policies. The mechanisms employed by the industry to impede the implementation of the Treaty include litigation to intimidate governments, establishing partnerships with governments to promote voluntary regulation, funding government health policies, subverting industry advertising and marketing bans by sponsoring concerts and sporting events, and supporting groups like the International Tobacco Growers' Association.⁴⁵

2.11 Taxation, or lack thereof

Taxation — or more often than not the absence of — is a recurring challenge across different manifestations of corporate capture. Whether in The Panama Papers where the use of fiscal paradises to avoid paying taxes was exposed, the reform efforts to disclose the beneficial owners behind companies, the narrative capture by corporations to avoid and reduce taxation, or the lobbying and electoral efforts of businesses to promote favorable legislation and politicians, tax issues are rife.

The deeper concerns, of course, are twofold. On one hand, how can a State adequately provide for social protection and welfare with reduced coffers? On the other, if working people pay their taxes, but rich people and corporations do not, this only exacerbates inequality.

A study by Oxfam International and the Latin American Council of Social Sciences (CLACSO) addresses this duality. The inequality policies implemented in Latin America, for example, such as raising salaries, employment, wealth redistribution, education, and social protection, have proven their effectiveness, but the decision on their implementation occurs in spaces of power asymmetry where, “often, it is the elites, those actors who concentrate the power to influence the political process, that permeate the resulting policies.” This is known as State capture.

“Several studies have shown that fiscal policy in Latin America and the Caribbean is a wasted policy for reducing inequality and poverty. Sometimes it even increases them. (...) [M]echanisms such as direct cash transfers, income tax, and social security contributions reduce market income inequality by 36%; in the region, they only reduce it by 6%.” On this point, the report states that “Only a State captured by the interests of certain elites can promote fiscal policies that increase poverty.”⁴⁶

⁴⁵ Bobby Ramakant, “What can we learn from industry interference around the global tobacco treaty?”, Business & Human Rights Resource Centre, 21 July 2015, www.business-humanrights.org/en/blog/what-can-we-learn-from-industry-interference-around-the-global-tobacco-treaty.

⁴⁶ Rosa Cañete Alonso, “Democracias Capturadas: El gobierno de unos pocos”, Oxfam/Clacso, 2018, www.oxfam.org/es/informes/democracias-capturadas-el-gobierno-de-unos-pocos. Pgs. 13-21.

Another challenge resulting from the corporate capture of the State is tax arbitrage and avoidance, or “the practice of profiting from differences that arise from the ways various types of income, capital gains, and transactions are taxed. The complexity of many countries’ tax codes allows for individuals to seek out legal loopholes or restructure their transactions in such a way that they are able to pay the least amount of tax.”⁴⁷ We need not look far to find examples: Apple, Google, Starbucks, HSBC, Barclays, Shell, Unilever, etc.

The OECD countries seek to prevent base erosion and profit shifting (BEPS) by multinational corporations through a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. However, negotiations are slow and implementation has been uneven. A concomitant challenge has been record-breaking windfall profits in recent years, particularly in the pharmaceutical, energy, and Big Tech sectors. Similarly, OECD countries have sought to impose additional taxes on windfall profits, most notably in the European Union. However, arbitrage and avoidance strategies, as well as a stiff corporate lobby, have hampered the desired effects of such a tax.

2.12 Investor protection measures and regulatory chill

Throughout the free trade era and with growing intensity over the past twenty years, treaty-based investment protection measures, including Investor-State dispute settlement (ISDS) mechanisms and arbitration tribunals, have become *du jour* manifestations of the corporate capture of inter-governmental and multilateral trade negotiations. In essence, these measures give corporations the right and a forum to challenge governmental decisions and sue for redress. What often occurs, especially in the Global South, is that governments do not have the resources to defeat corporations at the World Trade Organization (WTO), regional courts, or arbitration tribunals.⁴⁸

An advocate for fair trade and corporate accountability is the Transnational Institute (TNI) (Netherlands), which began working on ISDS in the mid-2000s to draw attention to the oft-overlooked investor protection measures.

TNI’s co-published report in 2012, “Profiting from injustice: how law firms, arbitrators and financiers are fuelling an investment arbitration boom,” helped to turn the tide. The report prompted major press coverage, angry rebuttals by investment lawyers, and was brandished by President Correa of Ecuador in his opening address

⁴⁷ James Chen, “Tax Arbitrage,” Investopedia, 25 November 2020, www.investopedia.com/terms/t/tax-arbitrage.asp.

⁴⁸ Sarojeni Rengam, Executive Director, Pesticide Action Network - Asia-Pacific, Interview on 7 September 2023.

to Congress. Backed up by many other TNI reports examining the costs of ISDS to public health, the environment and public services, and accompanied by seminars, trainings, distribution through networks and alliances, a global movement started to mobilise and public consciousness and anger at ISDS grew. (...)



Internationally, more and more countries including Indonesia, Pakistan, and South Africa have been emboldened to publicly oppose ISDS. The unprecedented pressure forced the European Commission to acknowledge the legitimacy of public concerns and to announce partial (and insufficient) reforms to ISDS.⁴⁹

More recently, TNI and the Colectivo de Abogados José Alvear Restrepo (CAJAR) (Colombia) have also published on this issue. “A sovereign policy focused on the well-being of the population, the protection of the environment and climate, and the promotion of local economy companies is irreconcilable with the rights granted to investors by investment protection treaties. If Colombia wants to break the vicious circle of receiving ISDS claims every time it wants to modify its policies and regulations, it is essential to review its investment protection regime. The only way Colombia can avoid new investment arbitrations is by denouncing the treaties and trade and investment agreements already signed and refraining from renewing or signing new ones, as they enable more claims.”⁵⁰

With global warming worsening and the energy transition accelerating, ISDS has also been associated with the term regulatory chill. “It is hypothesized that fossil fuel corporations will emulate a tactic employed by the tobacco industry – that of using ISDS to induce cross-border regulatory chill: the delay in policy uptake in jurisdictions outside the jurisdiction in which the ISDS claim is brought. Importantly, fossil fuel corporations do not have to win any ISDS cases for this strategy to be effective; they only have to be willing to launch them.”⁵¹

⁴⁹ "About us", Transnational Institute, n.d., www.tni.org/en/about.

⁵⁰ "ISDS en números. Colombia, un boom de demandas de inversores extranjeros", Transnational Institute (TNI) / Colectivo de Abogados José Alvear Restrepo (CAJAR), May 2023, www.tni.org/es/publicaci%C3%B3n/isds-en-numeros-Colombia.

⁵¹ Kyla Tienhaara, "Regulatory Chill in a Warming World: The Threat to Climate Policy Posed by Investor-State Dispute Settlement," *Cambridge University Press*, 22 December 2017, www.cambridge.org/core/journals/transnational-environmental-law/article/regulatory-chill-in-a-warming-world-the-threat-to-climate-policy-posed-by-investorstate-dispute-settlement/C1103F92D8A9386D33679A649FEF7C84.

2.13 Anti-protest, anti-speech repression

A worrisome challenge that numerous corporate accountability advocates, human rights defenders, and rightsholders face, as well as journalists and media organizations, is corporate-sponsored attempts to curb our rights to protest or speak out against them. A prominent coalition of civil society organizations (CSOs), the “Protect the Protest” Task Force, has led the resistance against these efforts.

“A growing number of corporations, law firms, and individuals are attempting to intimidate public watchdogs with a range of repressive tactics, notably ‘Strategic Lawsuits Against Public Participation’ (SLAPPs). SLAPPs masquerade as legitimate civil lawsuits, but are an abuse of the court system and a threat to democracy. For decades, powerful interests have filed these meritless lawsuits, knowing they can’t win but hoping to intimidate and silence public watchdogs. Abusing the courts to silence free speech is part of a global trend. Attempts to close civic space have intensified around the world as those who speak truth to power are harassed, jailed, and even killed. Legislatures are passing laws to criminalize protests. Journalists are being restricted in their ability to report on sensitive issues. Governments are not the only ones responsible for suppressing free speech, freedom of assembly, and dissent. Corporations and billionaire bullies are using SLAPPs to try to limit the First Amendment rights of their critics.”⁵²

A related concern is the withdrawal of corporate and government advertising for media organizations. While the media serves as a particular form of resistance against capture, corporations and governments exert pressure to limit the actions of journalists and news organizations perceived as hostile. For instance, in South Africa, during the Zondo Commission proceedings and the aftermath of the Gupta-Zuma scandal, the State stopped funding critical media outlets by withdrawing advertising contracts, leading to censorship and closure of news outlets.⁵³

2.14 Macro-crime and the rule of law

Throughout our interviews and literature review across the Global South, a major challenge that we identified is how private interests capture State security organizations and resources, as well as the presence of organized crime and illicit interests in the supply-demand continuum of capture. As noted earlier, organized crime and illicit interests present a methodological challenge for purists, mostly because the idea of non-corporate private interests seems to fall outside the scope of the definition; however, all sources consulted by Empower indicate that, not only should they

⁵² “About,” Protect the Protest Task Force, n.d., <https://protecttheprotest.org/about>.

⁵³ Luke Spiropoulos, “Civil Society in the Face of State Capture: Solidarity and Disharmony”, in Mbongiseni Buthelezi and Peter Vale (Eds.), *State Capture in South Africa. How and why it happened*, Wits University Press, 2023. <https://pari.org.za/new-book-state-capture-in-south-africa-how-and-why-it-happened>. Pgs. 130-50.

be included,⁵⁴ they are in fact commonplace actors in the supply-demand pipeline in both the Global North and South.

In Mexico, Empower has conducted considerable research on how the illicit financial flows of macro-crime⁵⁵ — for example, through shell companies in fiscal paradises fronting as legitimate corporations — act as both the subject (corporation), means (bribery), and object (a corrupt State actor) of capture. Regarding the crisis of forced disappearances and other grave crimes in northern Mexico, we wrote: “[This] study is a first approach to the phenomenon of violence and grave crimes that were committed in [Coahuila], both by State and non-State actors, from an analysis of illicit flows and State capture, a modality of corruption whereby the private power establishes institutional arrangements with the public power to impose its interests over the needs and rights of others. The level of impunity experienced in the state and in the country cannot be understood without analyzing the power structures in [Coahuila], as well as the complexity represented by the network of interactions between political, economic, and criminal actors. Faced with a framework of insecurity and privatization of violence, an intricate system of relationships of political and economic actors is identified that use violence (legitimate/illegitimate, legal/illegal) to sustain or reverse power structures. These networks of actors are linked at the global, national, and subnational levels, and are ultimately reflected in territories at the local level.”⁵⁶

Similarly to Mexico where often the object of capture are precisely the judicial and public security forces charged with enforcing the rule of law and prosecuting crime, South Africa’s recent experience investigating State capture and holding corrupt actors accountable ran into a wall, namely deeply entrenched criminality. “When it comes to a framework for regulation of the private sector in South Africa, it is not a lack of institutions or legislation that is a problem. Rather, the problem lies in both a lack of political will and the capacity in those institutions necessary to aggressively pursue accountability. This is particularly undermined by turmoil in some of the most important public crime-fighting institutions, such as the police and the National Prosecuting Authority (NPA). (...) The challenges faced by many of these institutions are deeply linked to criminal networks from South Africa’s past and present that have interfered to weaken their capacity to investigate and prosecute economic crimes.”⁵⁷

Also, in Colombia, one of the main challenges of State capture is “extrahección,” or “the inherent violence in the establishment of extractive complexes.” This involves a convergence of armed actors who have responded to strategic interests associated

⁵⁴ The inclusion of illicit private interests along the supply-demand continuum of the corporate capture of the State does not exclude organized crime, corrupt actors, etc. from liability and responsibility for more typically understood acts of crime.

⁵⁵ “Flujos ilícitos,” Empower, n.d., <https://crimenesgraves.empowerllc.net>.

⁵⁶ *Ibid.*

⁵⁷ “Corporations and Economic Crime Report. The Bankers”, Open Secrets, November 2018, www.opensecrets.org.za/cecr-vol-1-the-bankers. Pg. 46.

with the capture and control of extractive rents, both legal and illegal, along with a complex process of capital accumulation through the structural dispossession of peoples, communities, and territories of extractive interest. This facilitates the interaction between public officials, rent-seeking agents, and criminal actors in processes of systematic corruption.⁵⁸

2.15 Development capture

An instructive case of development capture — influencing the decision-making of development agencies in order to leverage development finance and diplomatic weight for private interests — can be found in Mongolia.

According to a report by the organizations Oyu Tolgoi Watch and the Center for Research on Multinational Corporations (SOMO), Oyu Tolgoi is Mongolia's most important mine, with mineral deposits worth a third of the country's GDP. Diplomatic cables sent from the U.S. Embassy in Mongolia revealed that the U.S. and other Western governments supported the multinational mining companies Rio Tinto and Ivanhoe Mines to pressure the Mongolian government and secure a favorable arrangement — the Oyu Tolgoi Investment Agreement (OTIA) — at the mine. Once the OTIA was signed, the World Bank and the International Monetary Fund offered Mongolia significant lines of credit in exchange for modifying laws to reduce taxes on mining corporations and increase their control over water and mineral resources (reversing the country's attempt to implement a “windfall profits tax” and secure majority ownership of the mine).⁵⁹

The Mongolian case is emblematic because, on one hand, it displays the power of multinational corporations and States to join together, pressure, and ultimately capture the decision-making of a less powerful country. On the other hand, inherent in development capture is the vulnerability of the captured object, in this case the Mongolian State, which traded away its sovereignty in exchange for a huge mining project. Therefore, transnational corporate capture of development trajectories serves as a mechanism through which powerful nations perpetuate the economic backwardness of impoverished nations, reproducing inequalities between the Global North and the South, as an expression of the “uneven development” characteristic of global capitalism.⁶⁰

Notably, another organization, The Sentry (U.S.), has produced significant studies about the corporate capture of the State in development contexts. For example, the case of the Wagner Group's presence in the Central African Republic shows how some mul-

⁵⁸ Fernando Vargas Valencia *et al*, *Extractivismo y captura corporativa del Estado en Colombia: aportes contra la impunidad*, Fundación Heinrich Böll (Colombia), 2023. <https://co.boell.org/es/2023/05/04/extractivismo-y-captura-corporativa-del-estado-en-colombia-aportes-contr-la-impunidad>. Pgs. 12, 13, 18.

⁵⁹ Rhodante Ahlers, Vincent Kiezebrink, and Sukhgerel Dugersuren, "Undermining Mongolia. Corporate hold over development trajectory", Oyu Tolgoi Watch/SOMO, February 2020, www.somo.nl/wp-content/uploads/2020/02/Undermining-Mongolia-EN.pdf.

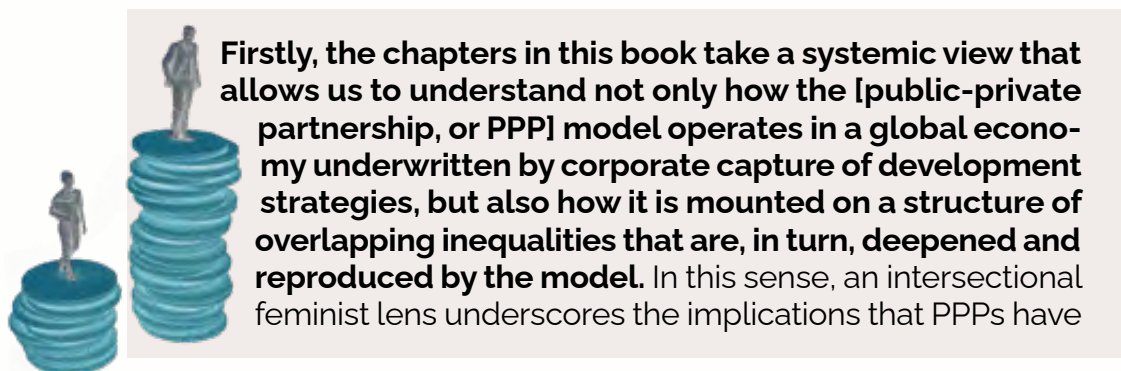
⁶⁰ Radhika Desai, *Capitalism, coronavirus and war. A geopolitical economy*, Routledge, 2023, www.routledge.com/Capitalism-Coronavirus-and-War-A-Geopolitical-Economy/Desai/p/book/9781032059501. Pgs. 62-3.

tionals operate with the assistance and in the interest of their home States (e.g. Russia), especially in contexts of geopolitical tension.⁶¹ China's mining interests in the Democratic Republic of Congo are indicative of this as well.⁶²

Yet another example of development capture is CropLife International, a trade association representing the pesticide and biotechnology industries. The U.N. Food and Agriculture Organization (FAO) and CropLife have a formal alliance, which the CAWG fears could undermine the FAO's ability to make decisions on agriculture without undue influence. CropLife International profits from the sale of products that impact biodiversity, ecosystems, and the health of farmers and indigenous communities.⁶³

Similarly, according to the Pesticide Action Network - Asia-Pacific (PANAL), when the ban on paraquat — a toxic chemical made by Syngenta and licensed to Chevron (U.S. only) that is widely used as an herbicide — was announced in Malaysia in January 2020, “a regulator said that Syngenta had donated money to one of the political parties within the government's ruling coalition. Also, in 2019, leading up to a proposed ban on the herbicide glyphosate in Thailand, the U.S. Ambassador appealed to the Minister of Agriculture not to ban pesticides [at the behest of the multinational Bayer]. The WTO pressured the government too. And it worked. This is the kind of influence that corporations have.”⁶⁴

In 2023, an important book about development capture was sponsored by Development Alternatives with Women for a New Era (DAWN). In addition to analyzing the economic and political dimensions of capture, the book delves deeply into the indigenous groups, communities, women, and others affected by this practice, as follows:



⁶¹ "Architects of terror. The Wagner Group's Blueprint for State Capture in the Central African Republic," The Sentry, June 2023, <https://thesentry.org/reports/architects-of-terror>.

⁶² "The Backchannel. State Capture and Bribery in Congo's Deal of the Century," The Sentry, November 2021, <https://thesentry.org/2021/11/28/6516/breaking-china-congo-deal-century-linked-fraud-bribery>.

⁶³ "Corporate capture of the United Nations," ESCR-Net, 11 February 2021, www.escr-net.org/news/2021/background-document-corporate-capture-united-nations. Pg. 4.

⁶⁴ Sarojeni Rengam, Executive Director, Pesticide Action Network - Asia-Pacific, Interview on 7 September 2023. See also: Carey Gillam, "Thailand's reversal on glyphosate ban came after Bayer scripted U.S. intervention, documents show," U.S. Right to Know, 17 September 2020, <https://usrtk.org/pesticides/thailands-reversal-on-glyphosate-ban>.

on the ground realities of women, racialised and indigenous groups, peasants, informal workers and local communities.

Secondly, the analysis is rooted in lived experiences. A feminist lens allows us to bring the everyday realities of patients and hospital workers, displaced communities, users with limited access to services and street vendors, among others, to the table. The case studies demonstrate that while PPPs are presented as a technocratic fix that streamline and optimise policy processes, in reality, their implementation has had negative consequences for people. These projects have reduced access to food, water, energy, health services and decent work; disturbed livelihoods; and worsened living conditions. Amidst claims that PPPs are technical agreements incomprehensible to most people, they have affected everyday life in obvious ways.

Thirdly, a transformative vocation is at the core of the Southern feminist approach presented here. Our analysis disputes the narrative that pegs PPPs as the only solution to the state's difficulties in providing social services and guaranteeing rights. We, therefore, propose a series of recommendations aligned with regulating PPPs and holding corporations and governments accountable in order to prevent and repair the abuses and inequalities that they reproduce.

This book also urges feminists, especially Southern intersectional feminists, to be vigilant of the constant threat of co-optation and instrumentalisation of our agendas. 'Add gender and stir' is not an acceptable way forward, and we cannot be satisfied by such mainstreaming efforts. They might be welcome, but they are not enough. (...)



Furthermore, the reform of the international financial architecture – that plays a central role in promoting PPP agreements – is crucial to dismantling the corporate capture of the global economy and laying the foundations of transformative horizons. Bringing a feminist lens to fiscal policy and global governance is the key to shifting development finance away from corporate capture and deploying it in public interest.⁶⁵

⁶⁵ Corina Rodríguez Enríquez and Masaya Llavaneras Blanco. "Conclusion: Corporate capture of development in times of exacerbated crises: Implications for democratic governance, rights and global inequality." *Corporate Capture of Development*. London: Bloomsbury Publishing Plc, 2023. Pgs. 279–291. *Bloomsbury Collections*. 31 May 2023. <https://dawnnet.org/publication/corporate-capture-of-development-public-private-partnerships-womens-human-rights-and-global-resistanceca>. Pgs. 288-91.

2.16 Finance sector

The financial services sector — banks, insurance companies, brokerages, investment funds, asset managers, private equity and hedge funds, some State-owned enterprises, and other economic service providers — is inextricably linked to the State. Entrepreneurs, companies, and investors have depended on the State for credit and bailouts since the “beginning of the transatlantic slave trade in the 1500s when the first corporations and monopolies received royal charters granting them shipping rights that, in turn, led to central banking, private banking, and venture capitalism — mechanisms that essentially finance the most heinous of human and labor rights abuses.”⁶⁶

Today, advanced capitalism, neoliberalism, and “the growth and empowerment of financial markets across multiple sectors of the economy and societies”⁶⁷ — also known as financialization — go hand in hand. The corporate capture of the State is the key mechanism through which capitalists and their allies in government have created so much wealth and harnessed enormous power through finance. Essentially, neoliberalism led to privatization and the decoupling of the Main Street and Wall Street economies; this led to the financialization of everything; banks and asset managers grew to have an outsized role in the financial economy; and the corporate capture of the State, specifically of those central banks and economic policies, facilitated it all.⁶⁸

According to Manolis Kalaitzake, three dimensions of financial corporate power combine to leverage its political dominance in the face of potential State regulation:

Instrumental power refers to conscious and formal political activity by financial actors, their institutions and associations. Needless to say, the material resources at the disposal of business groups are vast and generally dwarf those available to opposing interests. (...)

While such spending power can oftentimes “buy” privileged access to policy-makers, it is by no means the only mechanism through which financial actors consciously mobilise to affect policy outcomes. Indeed, since the crisis, public representatives do not want to be portrayed as “in the pocket” of large financial interests and thus, the industry frequently relies on a more subtle form of political leverage.

⁶⁶ *Runaway Train: The Perilous and Pernicious Path of Private Capital Worldwide*. Empower. 2021. <https://empowerllc.net/en/issues/private-capital>. Pg. 22.

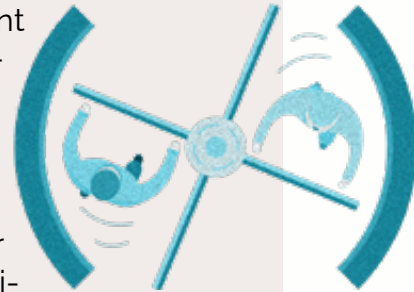
⁶⁷ *Ibid.* Pg. 34.

⁶⁸ *Ibid.* Pg. 15.

This involves using their technical know-how and expertise to embed themselves within key policy networks in an effort to affect results directly. Given that financial sector regulation is highly complex and requires in-depth knowledge, it is particularly prone to the phenomena of elite ‘revolving doors’ and so-called “regulatory capture.” (...)

Ideological power refers to the overarching neoliberal policy consensus that exists among senior elements of the corporate and political worlds (including elements of the mass media). Such policies closely align with the prerogatives of major financial institutions and investors who benefit immensely from the opening up of new market opportunities through privatisation, an anti-inflationary fiscal policy and the implementation of austerity that shifts the burden of post-crisis adjustment upon the population. (...)

Structural power refers to the persistent threat of capital flight and capital relocation that hangs over public representatives when making delicate choices about the conduct of economic policy. Simply put, if governments do not adhere to policies favourable to financial sector interests, they will be punished “automatically” through capital disinvestment. As such, this dimension of power refers to the unconscious and impersonal influence of global financial markets determined by an aggregation of market-driven investor sentiment; there is no *intentional* pursuit of political influence on the part of financial actors.⁶⁹



Finance poses numerous, transversal challenges for tackling the corporate capture of the State. What follows is a brief discussion about just a few key aspects.

2.16.1 Financialization

In 2021, Empower published a book about financialization, [Runaway Train: The Perilous and Pernicious Path of Private Capital Worldwide](#), examining the impacts of private

⁶⁹ Manolis Kalaitkaze, “Political capture by the financial industry,” TNI, 19 January 2015, www.tni.org/es/node/14399. Pgs. 3-5.

capital on human rights. We wrote that our understanding of financialization was the “the growth of the financial sector, its increased power over the real economy, the explosion in the power of wealth, and the reduction of all of society to the realm of finance.’ This entails international capital mobility as well as the deepening of finance-oriented accumulation strategies, both key components of advanced capitalism.”

In terms of its effects on people and the planet, we wrote that, “Together, privatization and financialization have become the twin engines of advanced capitalism. Hand-in-hand, these macro drivers have allowed for the increase in private capital and the shift to private markets by privatizing, assetizing, securitizing, and ultimately financializing not just public goods and services but virtually every aspect of life and nature.”⁷⁰

For this current report, both our interviews and literature review contained important viewpoints about corporate capture and financialization globally, including about the role of financial services technology. According to Conectas, “Corporate capture has recently gained additional contours: the evolution of artificial intelligence, data processing technologies, and the economy’s financialisation have made companies’ influence and power over States even more complex and refined.”⁷¹

A prominent critic of financialization is Leilani Farha, the former U.N. Special Rapporteur on the right to adequate housing and currently the founding executive director of The Shift. Her voice is unique because, as Special Rapporteur, Farha was one of the first actors globally to explain the intricate, bedrock-level connection between housing and financialization, the role of the State, and how this phenomenon violates a fundamental human right.

Across the globe, the greatest challenge to the realization of the right to housing by 2030 is posed by the unprecedented dominance of financial corporations in the housing sector. What is sometimes referred to as ‘corporate capture’ in other spheres has occurred in a singularly far-reaching and systemic manner in the housing sector in the last quarter century. (...)

The dominance of corporate financial actors in decision-making about housing and real estate and the loss of models of independent governance through which financial actors and markets can be adequately regulated has been gradual and often invisible. The trend has now

⁷⁰ Runaway Train: The Perilous and Pernicious Path of Private Capital Worldwide, Empower, 2021. Pg. 38.

⁷¹ Conectas (Brazil), Interview questionnaire, 21 September 2023.



become quite stark, with the unprecedented, visible role of real estate billionaires in government and policy-making in the USA and elsewhere. The corporate capture of democratic governance affects all sectors, but it is particularly all-encompassing and systematic in the sphere of housing and real estate. (...)

Financialized global markets are too often seen as external forces beyond the control of States. However, financialization is in fact a product of State action and inaction — sustained by and supported by States. (...) States and governments are perfectly capable of redesigning laws and policies governing housing and financial markets to recognize the centrality of the right to adequate housing, providing they are allowed to implement them.⁷²

In her interview, Farha discussed how corporate capture is the de facto mechanism explaining the financialization of the housing sector. “Housing is a mode of finance that’s so deeply ingrained in how our financial system works.” With the exception of Finland, which does not rely on financialization to address housing, the rest of the world is “in bed” with developers and finance. Simply put, the real estate sector convinces governments that more housing and housing finance are the solutions to the problems it causes, because the companies have the know-how and liquidity to do this, not the State.⁷³

A recent example of the corporate capture of the State in the housing sector can be found in the Province of Ontario, Canada. There, at the wedding of a politician’s daughter, to which real estate developers were invited, a provincial cabinet minister was caught offering developers opportunities to build on lands protected from development (“greenbelts”).⁷⁴ In 2022, the approval to build on former greenbelt lands was approved, but, in 2023, “[The] Ontario Minister of Municipal Affairs and Housing Steve Clark on Monday resigned from the Canadian province’s cabinet following a scathing report from the Ontario Integrity Commissioner released last week, which found that Clark had put himself into a position with a conflict of interest and violated integrity mandates while overseeing the process of opening protected Greenbelt lands to housing development.”⁷⁵

⁷² Leilani Farha, “Commodification over community: financialization of the housing sector and its threat to SDG 11 and the right to housing,” *Spotlight on Sustainable Development* 2017, July 2017, www.2030spotlight.org/en/book/1165/chapter/11-commodification-over-community-financialization-housing-sector-and-its-threat. Pgs. 105-10.

⁷³ Leilani Farha, Executive Director, *The Shift* (Canada), Interview on 14 September 2023.

⁷⁴ *Ibid.*

⁷⁵ David Lazzam, “Ontario housing minister resigns over ethics violations in Greenbelt scandal,” *Jurist*, 5 September 2023, www.jurist.org/news/2023/09/ontario-housing-minister-resigns-over-ethics-violations-in-greenbelt-scandal.

A major challenge posed by corporate capture and financialization is that the private sector, in many cases, simply has more money than the State. In Brazil, “Corporations have become financialised and increasingly impermeable to pressure. (...) The state has become managed by corporations, so Vale is now involved in governing Brazil. (...) In the case of Vale, at the same time as it became financialised, it also got more involved politically. In the state of Minas Gerais, they finance 60% of the political representatives. They also have great relations with members of the Supreme Court and the judicial system.”⁷⁶ A similar problem occurs in Kenya where, seeking new financing and urban planning, the government called on the world’s largest private equity firm, Blackstone, to advise its development.⁷⁷

A concrete manifestation of the financial industry’s power was the “watering down” of the European Financial Transaction Tax (FTT), a policy pursued by European authorities since 2009. In the aftermath of the financial crisis, it was deemed appropriate for the financial sector to contribute towards the costs of the crisis. At the regional level, the European Union pushed ahead, aiming to design a FTT that would showcase the effectiveness of such a policy to the international community. The European Commission proposed a charge on shares, bonds, and derivative transactions, which was intended to encompass the widest possible scope of financial activity in an effort to prevent tax avoidance and capital relocation. Moreover, firms could not evade legal measures simply by moving out of the European jurisdiction; the only way for financial entities to escape the charge would be to avoid commercial interaction with European countries entirely. “This carefully crafted FTT proposal was initially set to be implemented in January 2014, yet eventually faced postponement and extensive watering down. The explanation for this outcome lies in the complex interaction of instrumental and structural financial political power. Across the EU, a plethora of transnational financial sector trade associations began to mobilize vigorously against the charge. The dominant tactic was to push for various exemptions across different sub-sectors of the financial industry in order to narrow the scope of the tax”. In the end, the policy missed its intended January 2014 implementation deadline, getting lost in a political stalemate among European authorities.⁷⁸

When it comes to the regulation of banks and the financial system, a real problem is supervisory capture, when regulators become too close to the firms they supervise and develop pro-company biases. “In such cases, supervisors may be reluctant to enforce and escalate supervisory actions, compromising the effectiveness of super-

⁷⁶ “Fighting Vale and corporate capture in Brazil. Interview with Tchenna Maso,” Transnational Institute, 4 February 2020, www.tni.org/en/article/fighting-vale-and-corporate-capture-in-brazil.

⁷⁷ Leilani Farha, Executive Director, The Shift (Canada), Interview on 14 September 2023.

⁷⁸ Manolis Kalaitkaze, “Political capture by the financial industry,” TNI, 19 January 2015, www.tni.org/es/node/14399. Pgs. 6-9.

visory intervention.”⁷⁹ A concomitant concern is the revolving door between financial regulators and financial firms.⁸⁰

This problem posed a challenge to the integrity of the U.S. financial system following the pandemic, when the world’s largest asset manager, BlackRock, landed a contract to manage the Fed’s corporate debt repurchase program. “In particular, BlackRock gained 100 billion USD in new clients during Q2 2020 alone, as well as a privatized form of management of the Fed’s bond-buying program. For comparison’s sake, BlackRock’s 7.4 trillion USD AUM is approximately equal to the combined value of the world’s top 20 pension funds. Such size and influence have led to calls by financial regulators to regulate asset managers like banks given their systemic importance for the economy.”⁸¹

One of the anti-corporate capture innovations that we discuss subsequently involves the political education work of the CAWG. According to Mona Sabella, “Next [corporate capture-themed] comic will be on debt, essentially how corporate capture has deepened the State debt crisis in a way that benefits financial institutions. It’s about how corporations control government decision-making on borrowing, how corporate capture influences financial institutions’ decision-making, how debt is repaid, and who benefits from it.”⁸² What is instructive about this, and a commonality throughout our interviews and literature review, is who are these actors that advise, influence, and cajole States into propagating financialization in the private interest? The answer more often than not is: consultants and other economic service providers.

2.16.2 Consultants and economic service providers

Like Russian dolls, business consultants and economic service providers (ESPs) are found within financial and other business transactions, themselves part of larger corporate capture schemes. While they might be the smallest “doll” of the bunch and hidden within, these influential insiders have unique access and vast resources to be able to move the machinery of corporate capture forward. These accountants, bankers, consultants, and lawyers operate at the center of the global financial system.

⁷⁹ Tobias Adrian, Marina Moretti, Ana Carvalho, Hee Kyong Chon, Katharine Seal, Fabiana Melo, and Jay Surti, “Good Supervision: Lessons from the Field (Working Paper),” International Monetary Fund, September 2023, www.imf.org/en/Publications/WP/Issues/2023/09/06/Good-Supervision-Lessons-from-the-Field-538611. Pg. 23.

⁸⁰ For example: “The nomination of Carlos Agostinho do Rosário (CAR) for President of the Board of Directors (PCA) of Banco Comercial and Investments (BCI) represents a phenomenon little debated in Mozambique, the transition of former governors who will occupy positions of top in commercial banking. The phenomenon is known as ‘revolving door,’ which is nothing more than the capture of the public sector by private/private sector interests. The transition from CAR to BCI does not represent the first case of its kind, it is only the most recent to happen.” See: Baltazar Fael, “Appointment of former prime minister Carlos Agostinho do Rosário for Commercial and Investment Bank PCA shows standard capture of the public sector by private interests,” Public Integrity Center (CIP) (Mozambique), 3 July 2023, www.cipmoz.org/wp-content/uploads/2023/07/Indicacao-do-ex-primeiro-ministro-Carlos-Agostinho-do-Rosario.pdf.

⁸¹ Runaway Train: The Perilous and Pernicious Path of Private Capital Worldwide, Empower, 2021, <https://empowerllc.net/en/issues/private-capital>. Pg. 49.

⁸² Mona Sabella, Coordinator, Corporate Accountability, ESCR-Net, Interview on 6 September 2023.

Throughout our interviews, the role of ESPs in South Africa's experience with State capture was noteworthy. In their chapter "How professionals enabled state capture" from the book *State capture in South Africa. How and why it happened*, the authors Chereese Thakur and Devi Pillay adeptly explain how ESPs deployed capture upon the State.

At the outset, State capture requires the involvement of individuals with specific attributes, such as skills, knowledge, and a presumed level of integrity. Professional facilitators, including lawyers, auditors, and consultants, play a significant role in this process. In South Africa, the "Big Four" auditing companies — KPMG, PricewaterhouseCoopers (PwC), Deloitte, and Ernst & Young — were all involved. "The state capture saga has made clear just how intimately involved private companies are with the core work of the state. (...) Evidence before the Zondo Commission has shown that state-owned entities time and again have paid millions for unnecessary advisory services — services for which there was sufficient internal expertise and capacity."⁸³

The most prominent legal services company involved in unethical activities was Hogan Lovells, which issued a report for the South African Revenue Service (SARS) to clear the name of Jonas Makwakwa, the former head of business and individual taxes at SARS, who was accused of money laundering, and reinstate him to his position. McKinsey & Company, a consulting firm, was implicated in misconduct regarding contracts signed with the SOEs Eskom and Transnet, both linked to the Gupta family. In the financial sector, Nedbank, HSBC, and Bank of Baroda were accused of not detecting suspicious transactions related to State capture and their potential direct involvement in fraud and money laundering.⁸⁴

According to Corruption Watch, "The middlemen were influencing policies, but the whole thrust of the issue was facilitated by McKinsey, Bain, and other consulting firms that were very effective in furthering State capture by legitimizing it. Consulting groups and the creation of intermediaries is a common form of State capture. Although we had reduced the State capture, the problem had proven difficult to overcome. They had people at all levels of government."⁸⁵

Much of the corruption involving professionals in the private sector was a result of the State's inability to establish a professional public administration. The Zondo Commission did not look at the role of banks in facilitating transactions nor at the consulting firms involved. There were no criminal consequences for banks or other ESPs.⁸⁶

⁸³ Chereese Thakur and Devi Pillay, "How professionals enabled state capture", in Mbonginesi Buthelezi and Peter Vale (Eds.), *State capture in South Africa. How and why it happened*, Wits University Press, 2023, <https://pari.org.za/new-book-state-capture-in-south-africa-how-and-why-it-happened>. Pgs. 122.

⁸⁴ *Ibid.* Pgs. 109-29.

⁸⁵ David Lewis, Executive Director, Corruption Watch (South Africa), Interview on 16 August 2023.

⁸⁶ Representative of the management team, Centre for Applied Legal Studies (CALS) (South Africa), Interview on 21 September 2023.

Economic service providers are not a challenge unique to South Africa. Throughout this report we discuss examples of how ESPs have infiltrated the State and facilitated capture worldwide. The European Union, for example, is no exception.

The European Commission has hired consultants who work for some of the biggest monopolies in the world to evaluate its merger enforcement policies. Enquiries made by Corporate Europe Observatory and LobbyControl show that the European Commission has barely explored if there is a conflict of interest in such an appointment, ignoring the EU Ombudsman's recommendations. (...)

This is not a new phenomenon. For many years the European Commission has hired consultancy firms to undertake investigations and analysis in policy areas that they have a direct or indirect financial stake in. Just a few years ago, the Commission hired BlackRock, the biggest asset manager in the world, which has major investments in fossil fuel companies, to advise on policies on sustainable investments. This prompted the European Ombudsman to demand a revision of the Commission's conflict of interests rules when issuing tenders. Our research shows however that the European Commission has not amended its internal procedures.⁸⁷



2.17 Climate crisis and energy transition

Global warming. Melting sea ice. Rising sea levels. Once-in-a-century storms. Depletion of fossil fuel resources. We all know the signs of the climate crisis. But what about the corporate capture of the State within the energy transition? What are the challenges and gaps keeping us from achieving a just energy transition?

The answers to these questions cover numerous topics, including the renewable energy transition, critical minerals and supply chains, the particular role of State-owned enterprises, climate finance and how we pay for it, and greenwashing and false solutions. We also discuss a handful of cases — mostly in the Global South — that reveal further challenges, including the human rights dimensions and other aspects of justice in the energy sector.

⁸⁷ "How the Commission outsourced its merger policy to Google's best friend," Corporate Europe Observatory, 26 April 2023, www.corporateeurope.org/en/2023/04/how-commission-outsourced-its-merger-policy-googles-best-friend.

2.17.1 Renewable energy transition

By some accounts, the Earth reached peak coal in 2014 and peak oil in 2023 and, by 2034, it will also reach peak natural gas. At that point, given current trends in the transition towards renewable energy, we will reach peak final energy demand by 2035. Between 2035 and 2050, as overall energy demand decreases slightly and more renewable energy comes online, the world will pass the 50% threshold of the non-fossil fuel energy mix. At that point, we can say that the renewable energy transition is over halfway there.⁸⁸ Meanwhile, enormous climate, environmental, economic, political, and social change and unrest lie ahead.

A big challenge wrought by the energy transition is precisely its timing, which could potentially divide the environmental movement. On one hand, arguing that the planet cannot wait any longer, there is pressure on the energy transition to happen as quickly as possible. On the other hand, there is a tension between human rights advocates, workers, communities, climate activists, and policymakers about how to ensure a just transition for both people and planet.⁸⁹

In this milieu we find the corporations themselves, essentially split between those benefiting from fossil fuels, those seeking to benefit from renewable energy, those that hedge their bets on both, and the investors and financial institutions that benefit from it all. The logic of the corporate capture of the State, of course, is how to maximize private interests vis-a-vis the common good.

The “corporate energy transition” — as conceived by the Transnational Institute and Taller Ecologista — perceives the climate emergency as an opportunity for the accumulation of wealth as well as geopolitical hegemonic positioning. This perspective, supported by multinational corporations, States, multilateral institutions, and various organizations, exclusively focuses on a techno-economic approach as the “fastest” response to the urgency of the climate crisis. Thus, the corporate energy transition does not represent a paradigm shift but rather “an expression of the way in which the capitalist system attempts to capitalize on the energy and climate crisis for a new cycle of accumulation.”⁹⁰ Machinery, projects, and research stay controlled by or work in favor of multinational corporations or world powers, limiting the possibility of democratizing the use of energy and technology. In this manner, existing power relations and inequality remain untouched. Such a transition permits the continuing process of wealth and power accumulation through new extraction areas: “Thus, the corporate energy transition is based on the trivialized notion of ‘sustainable development’, on

⁸⁸ “Energy Transition Timeline,” Det Norske Veritas Group, 10 September 2018, www.dnv.com/power-renewables/insights/index.html.

⁸⁹ Mary Beth Gallagher, Head of Engagement, Domini, Interview on 31 August 2023.

⁹⁰ “Towards A Corporate or A Peoples’ Energy Transition?,” TNI and Taller Ecologista, December 2019, www.tni.org/en/publication/towards-a-corporate-or-a-peoples-energy-transition. Pgs. 1-3.

continuing on the path of limitless growth, exchanging fossil resources for renewables and high technology, without modifying the logic of capitalist consumption, nor questioning the distribution or access to energy of populations or citizen participation in decision-making processes.”⁹¹

In June 2023, Dalberg, a strategy and policy advisory firm based in the Global North but with offices throughout the Global South, prepared a conceptual framework as part of a horizon scan on the climate and energy sector (see [Tables 1](#) and [2](#)).⁹² We found it useful and have adapted it here as a guide for identifying the corporate capture challenges in the energy transition.

Table 1 — Overview of Corporate Capture in the Energy Transition

Issue	Explanation
Transition minerals	As the demand for critical minerals rises, corporate capture puts at risk the sustainability of the energy transition.
Regulatory chill	Fossil fuel companies influence governments through intimidation and use softer lobbying tactics to weaken climate regulation.
Harnessing ESG	Insufficient rigor and accountability in ESG reporting and investment hinders corporates’ abilities to power the green transition.
Public revenue capture	Fossil fuel companies have captured both subsidies and tax breaks to preserve their market position.
State-owned enterprises	Drivers of policy formulation and implementation ‘capture,’ particularly in the Global South.

⁹¹ *Ibid.* Pg. 3.

⁹² "Strategy Horizon Scan on Corporate Accountability: Navigating Corporate Influence in the Climate and Energy Sector," Dalberg, 15 June 2023.

Table 2 — Extended Overview of Corporate Capture in the Energy Transition

Issue	Sub-issue
Transition minerals	Significant environmental, social, and governance challenges in the transitional minerals sector may lead to corporate capture.
	Estimates suggest that the energy transition depends on a 4 – 6x increase in the supply of transition minerals.
	Multinational large-scale miners and SOEs are crucial to understanding issues of corporate capture in the mineral sector.
	Extraction of transition minerals is concentrated in the Global South, with processing overwhelmingly done by Chinese companies.
	Potential solutions include enhancing state capacity and using trade conditionalities as a lever.
	Additional solutions include building a coalition of technology manufacturers.
Regulatory chill	Investor-State Dispute Settlement (ISDS) suits, domestic litigation, and lobbying all deter governments from regulating climate change.
	The threat of expensive ISDS litigation is a key driver of regulatory chill.
	The Energy Charter Treaty undermines climate action by favoring fossil investors through outdated standards of protection.
	Regulatory chill is a global challenge driven by energy companies, particularly fossil fuel companies.
	Litigation finance and directly building government capacity are pathways with a track-record of success.
	One off-the-wall approach would be to support impact investors and renewable companies to use ISDS to fight back against regulatory chill.

Issue	Sub-issue
<p>Harnessing ESG</p>	<p>A growing number of corporations are reporting their ESG impact and the value of ESG investments is rising over time.</p> <p>Although ESG assets are currently concentrated in Europe and North America, ESG investments are also steadily growing in the Global South.</p> <p>Even as investors, corporations, and rating agencies are driving the growth of ESG, they are also contributing to challenges of greenwashing.</p> <p>Enablers of ESG’s current challenges include a lack of universal standards and transparency, insufficient regulations, and political backlash.</p> <p>Increased climate disclosure and accountability regulation is a key solution, particularly influencing E.U. regulations in the next 6-12 months.</p> <p>Longer term, two levers to tighten gaps in the ESG regime include supporting public narrative change campaigns and shareholder resolutions. These efforts could be paired with a strategy involving work with pension funds, promoting private standards or legal reform.</p> <p>These efforts could be paired with a strategy involving work with pension funds, promoting private standards or legal reform.</p>
<p>Public revenue capture</p>	<p>Public revenues are over-invested in fossil fuels relative to renewable energy.</p> <p>Public overinvestment in fossil fuels is driven both by affirmative public spending and by imbalanced or ineffective tax codes.</p> <p>The EU’s Carbon Border Adjustment Mechanism (CBAM) could be a critical tool for addressing fossil fuel revenue capture.</p>

Issue	Sub-issue
<p>State-owned enterprises</p>	<p>SOEs are critical in 'capturing' policy formulation and implementation, particularly when operating domestically.</p>
	<p>SOEs account for ~16% of global emissions, with Chinese SOEs as the primary driver of this phenomenon.</p>
	<p>SOEs account for ~8% of total global emissions outside of the U.S. and China.</p>
	<p>SOEs are significant emitters in their domestic context, accounting for 5-38% of domestic emissions.</p>
	<p>SOEs derive their influence on domestic government from their impact on State revenues and their importance as State employers.</p>
	<p>SOEs are critical actors in influencing and implementing climate policy, particularly in the Global South and emerging markets.</p>
	<p>Although countries are increasingly focused on developing climate-specific SOE policies, much work remains to be done.</p>
	<p>Given SOEs' relationship to the State and their role in key sectors, there is a clear opportunity to use more direct tools to address corporate capture.</p>

Dalberg describes many of the actors, interests, risks, and capture mechanisms in the energy transition. We complement its list as follows:

- Conceptual capture of renewables:** Rhetorically, proponents of the renewal energy transition have used the term “green energy” almost to excess. The implication is who could possibly oppose “environmentally-friendly,” “green,” or “renewable” solutions. While partially true, this terminology has also caused harm. Some renewable energy companies, green developers, regulators, environmentalists, and journalists have taken this too far, having criticized, sued, attacked, and generally undermined their perceived opponents, including indigenous communities, rural landowners, human rights defenders, and workers whose rights, lives, and livelihoods are impacted by renewable energy development. This is problematic because there is an assumption that renewables are the solution, not the problem, so human rights violations committed by these companies are often minimized or overlooked. Conceptual capture, as it were, is baked into the solution.

- **Corruption and undermining trust:** Overall, one corporate capture strategy is simply to undermine the energy transition altogether. Fossil fuel companies and businesses dependent upon them are being disrupted at a ferocious pace. For many of them, the answer is to slow down the pace, including by facilitating corruption so as to cause States and the public to lose enthusiasm for the process. For example, “Corruption may undermine the effectiveness of [a] carbon tax and make it more difficult for the government to win public support to adopt ambitious policies, as [the] public may be less supportive of these policies if their adoption and specific characteristics are influenced by corrupt actors. (...) [The carbon] tax is susceptible to corruption and state capture risks at various stages of the policy cycle, including adoption, implementation, and evaluation.”⁹³
- **Theft and diversion of resources:** Just as with the energy transition from coal to oil and then to natural gas, States invest enormous amounts both upstream and downstream to facilitate development, creating incentives for private and public actors to commit theft and divert public resources. The renewable energy transition is no exception. “The most typical form of grand corruption occurring in renewables, based on existing research, is institutionalised grand corruption. (...) For example, there is evidence of institutionalised grand corruption in Malaysia through directing hydropower contracts to companies tied to the family of the chief minister of Sarawak, Mahmud Taib. (...) There are allegations of public spending for large dams being diverted to the Taib family, who remained in political power in the state of Sarawak, and to companies connected to this family.”⁹⁴

2.17.2 Critical minerals and supply chains

As renewable energy increasingly powers our lives, the demand for battery storage and other infrastructure components to produce, transport, store, and power new electricity and electricity-powered devices, such as cars, has grown exponentially. The global transfer of resources required to keep up with this pace — beginning with raw material producers in the Global South, through supply chains leading to manufacturers, and later to end consumers, at the outset, mostly in the Global North — creates new wealth and numerous opportunities for capture, thus aggravating the risk of corruption — including theft and the diversion of resources.

The Natural Resources Governance Institute (NRGI) has followed the energy transition closely, particularly regarding corruption in mineral supply chains. “The International Energy Agency (IEA) projects that meeting Paris Agreement goals will require a qua-

⁹³ Miloš Resimić, “Grand corruption and climate change policies. Overview of grand corruption evidence in energy transition, biodiversity loss and climate finance,” CHR. Michelsen Institute / Anti-Corruption Resource Centre / Transparency International, 19 October 2022, <https://knowledgehub.transparency.org/helpdesk/grand-corruption-and-climate-change-policies-overview-of-grand-corruption-evidence-in-energy-transition-biodiversity-loss-and-climate-finance>. Pgs. 6-7.

⁹⁴ *Ibid.* Pgs. 17-8.

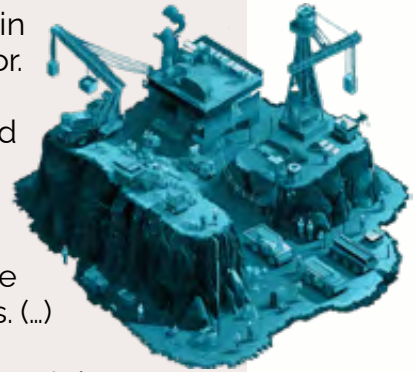
drupling by 2040 of demand for minerals used in technologies like solar panels, wind turbines and electric vehicles. ... New mines will need to swing into production much faster than the current industry average of 16 years to meet oncoming demand, but this must not come at the price of environmental, social and governance (ESG) safeguards. Corruption will undermine the mining and metals sector's ability to meet this surging demand responsibly, if at all."⁹⁵

Transparency International has also studied grand corruption in the energy transition, including illustrative examples from Guatemala and Democratic Republic of the Congo (DRC):

In Guatemala, the revolving door between the Ministry of Energy and Mines and the Ministry of Environment and Natural Resources on the one hand and top-level positions in national mining companies, which are subsidiaries of multinationals, on the other, increase risks of regulatory capture. (...) A number of former political officeholders in Guatemala had links to mining companies, either directly or indirectly through their family members, which blurs the boundaries between public and private interests. (...) For example, ties were discovered between the ex-minister of energy and mines, Erick Archila Dehesa, his family and companies in the extractive sector, and decisions they made while in these positions may have benefited the private sector.

In the DRC, the mining code of 2002 officially aimed to liberalise the sector and create a level playing field for mining companies. However, it further entrenched the privileged position of state-owned companies as they could keep most of their valuable permits and sell them for concessions to other firms. (...)

State-owned firms typically had most of the mining rights "in commercially exploitable and profitable deposits." ... As a consequence, it became common for firms to obtain mining rights by getting into joint ventures with these state-owned companies.⁹⁶



⁹⁵ Expert Group on Preventing Corruption in Transition Minerals, "Preventing Corruption in Energy Transition Mineral Supply Chains," Natural Resource Governance Institute, 6 December 2022, <https://resourcegovernance.org/publications/preventing-corruption-energy-transition-mineral-supply-chains>. Pg. 5

⁹⁶ Miloš Resimić, "Grand corruption and climate change policies. Overview of grand corruption evidence in energy transition, biodiversity loss and climate finance," CHR. Michelsen Institute / Anti-Corruption Resource Centre / Transparency International, 19 October 2022, <https://knowledgehub.transparency.org/helpdesk/grand-corruption-and-climate-change-policies-overview-of-grand-corruption-evidence-in-energy-transition-biodiversity-loss-and-climate-finance>. Pgs. 23-8.

Corporate capture and grand corruption, not to mention heinous examples of child and forced labor, deforestation, sexual violence, and land and indigenous rights violations typical of natural resources supply chains, are precisely the issues that undermine hope for a just transition.

2.17.3 State-owned enterprises

In the Global South, SOEs account for 33% or more of the largest companies in China, India, Indonesia, Malaysia, Russia, Saudi Arabia, and the United Arab Emirates and, as of 2017, they accounted for 50% or more of all infrastructure commitments. As of 2018, the assets of SOEs accounted for half of global GDP.⁹⁷ Globally, SOEs account for approximately 16% of total emissions and, outside of the U.S. and China, approximately 8%, not to mention domestically where their contributions vary between 5 — 38%.⁹⁸

Within the energy transition, SOEs play a prominent role. According to the Center on Global Energy Policy at Columbia University, “Across Asia, Africa, and Latin America, SOEs dominate key sectors of national economies, particularly energy. SOEs have a critical role to play in reducing emissions, directing funding toward low-carbon alternatives, and bolstering resilience efforts. Depending on the country, SOEs can be well-positioned to drive climate action across power, oil and gas, industry, and urban transit. State-controlled national and multilateral financial institutions are also often key funders of high- and low-carbon projects. SOE actions in shaping and implementing climate policies and programs will have major implications for the efficacy of the global response.”⁹⁹

Given their importance both economically and to the energy transition, as well as their endogenous role within States, SOEs and their potential to both capture and become captured deserve particular attention. In principle, SOEs are led and governed by actors sworn to act in the public interest, including their corporate leadership, governance and accountability mechanisms, and political benefactors in the executive, legislative, and judicial branches of government. However, given that they serve a bureaucratic, political, or even economic elite, the pure notion of acting in the public interest often succumbs to the economic and political exigencies of government.

Throughout our interview and literature review, SOEs were cited as both subjects and objects of State capture. The examples are numerous. The Lava Jato (Operation Car Wash) scandal in Brazil, which spread throughout Latin America. The Gupta-Zuma State capture

⁹⁷ "Fiscal Monitor, April 2020: Policies to Support People During the COVID-19 Pandemic," International Monetary Fund (IMF), 15 April 2020, www.elibrary.imf.org/display/book/9781513537511/ch03.xml.

⁹⁸ "Strategy Horizon Scan on Corporate Accountability: Navigating Corporate Influence in the Climate and Energy Sector," Dalberg, 15 June 2023.

⁹⁹ Philippe Benoit, "Engaging State-Owned Enterprises in Climate Action: Workshop Report," Center on Global Energy Policy at Columbia University, 9 November 2020, www.energypolicy.columbia.edu/publications/engaging-state-owned-enterprises-climate-action.

affair in South Africa, which was investigated by the Zondo Commission. The corruption of Pemex in Mexico, leading to high-profile criminal investigations and political turmoil. Petrochina and Sinopec in China, which drew the wrath of President Xi Jinping. The top-level corporate capture challenges that SOEs pose for the State, particularly within the energy transition, include:

- **Incentives for corruption:** A common thread through the aforementioned examples is the diversion of public resources towards private interests, whether in the form of theft or the more subtle use of public procurement to dole out lucrative contracts to business or political cronies. As a result, reduced resources within SOEs jeopardizes the potential to invest in the capabilities needed for the energy transition and “reduces the capacity within public institutions to implement policies and initiatives that could support the transition.”¹⁰⁰
- **Structural rigidity and resistance to change:** As public institutions, SOEs are huge bureaucracies — oftentimes with tens of thousands of employees, if not more — subject to government policy and political interference, and are often slow and resistant to change. This rigidity both protects extant capture and corruption networks within SOEs, and prevents bureaucratic structures from tooling up and adapting to drive the energy transition.
- **Transparency and accountability:** Currently, over 60 oil, gas, mining, and other extractive SOEs participate in EITI reporting, over 25 are represented in EITI multi-stakeholder groups, and over 20 countries fully disclose transactions from and to SOEs. Nevertheless, “EITI reporting and validation have shown that although financial transactions related to state-owned companies have become more transparent, there is still demand for improving transparency standards around SOE governance.”¹⁰¹ So as to ensure transparency, SOEs must fully disclose their ownership, shareholding structure (if any), reporting protocols, and governance decision-making. Unless citizens are literally owners — with actual economic value shares — of these companies, as in some Scandinavian countries, SOEs will have to do more to avoid being black boxes for accountability.¹⁰²
- **Privatization:** As objects of corporate capture, SOEs pose juicy targets for companies seeking to obtain privatized assets at a bargain. In the fossil fuel sector, while some emblematic upstream production remains the domain of SOEs, there are countless examples of oil, gas, and mining assets once owned by the State that have passed into the hands of private interest, whether as long-term concessions

¹⁰⁰ Brent Cleote, “State capture and the transition to a green economy,” DNA Economics / Afreeconomics, 2 July 2018, www.dnaeconomics.com/pages/climate_change/?zDisplD=NewsArtpeer_review_of_our_publications.

¹⁰¹ “State-owned enterprises,” EITI, n.d., <https://eiti.org/state-owned-enterprises>.

¹⁰² Adriana Labardini, Former anti-monopoly regulator for the Federal Telecommunications Institute of Mexico, Interview on 18 August 2023.

or leases, or as fully privatized entities. The downstream segments, such as infrastructure, transportation, and financialization, with few exceptions are almost entirely in private hands. In the renewable energy sector, a combination of State and multi-lateral funding and private companies have shared the risk to develop these assets, sometimes as public-private partnerships but largely as fully private endeavors. Where this is changing, however, is when fossil fuel SOEs, for example in the Middle East and North Africa, are given new mandates to branch out into renewables. Also, some SOEs, such as Codelco in Chile and “Litio para México,” have nationalized the lithium and other transition minerals to ensure a strategic role for these States in the energy transition.

- **Personnel turnover and the revolving door:** The cases of Brazil and South Africa illustrate how fragile governments cause personnel turnover within SOEs, which is taken advantage of by political or private interests using the revolving door phenomenon.

According to Conectas, “In Brazil, the political system — characterized by ‘coalition presidentialism’ — is subordinated to the instability of coalitions and temporary public demands, which generates high turnover in the management positions of State-owned companies and frequent changes in the objectives and execution of their business activities. This may make it easier for managers, through the use of their power or influence, to direct the actions of [SOEs] toward personal or private ends. It also allows its public agents to use privileged information or access obtained during their work at the [SOE] as an advantage for their insertion or professional performance in the private sector. In other words, the [SOE], which should [advocate for] the public interest, ends up being appropriated for political and personal interests, harming the population in the short term — by spending public money on managers who only pursue private interests — and in the long term — as the company loses its ability to resist and compete in the market with private companies that appropriate its confidential information.”¹⁰³

According to the Public Affairs Research Institute (PARI), a South African civil society organization, “There are a lot of [SOEs] in South Africa. There is a historical pattern: during Apartheid, these enterprises were used for development but also for finding jobs for cronies. State capture has been focused on SOEs because of the amounts of money they handle. The State spends a lot on procurement. There are a lot of regulations and legislations that ensure the money is going to local Black-owned firms or associated with such businesses.” A pattern that PARI observed with the Zondo Commission was multinational corporations partnering with Black-owned firms, which were often shell companies, in order to secure public contracts, mostly in ESKOM, Transnet, and PRASA. In particular, ESKOM and Transnet were designed to promote and lead the developmental State. Part of the problem was that strategic decisions for the State were taken from the outside, by consultancy firms such as McKinsey & Company.

¹⁰³ Conectas (Brazil), Interview questionnaire, 21 September 2023.

“There is a lot of political contestation about who makes public appointments, how they work, and who should be removed. If the former president Zuma wanted someone specific at the top of a company, he made the appointment. These people who had been appointed had relationships with third parties, like the Gupta family. These appointments were made through specific networks to award contracts and then inflate them. One problem for the Zondo Commission was to identify or probe who benefited from public contracts and appointments. Those executives, for example, didn’t directly receive bribes, there was no evidence. It was entrenched within political parties. These networks are able to maintain political power. It was difficult to trace the money once it left the country. The Commission only knew about it because of the Gupta Leaks.”¹⁰⁴

- **Environmental and social impacts:** Again, the South African example is indicative of a larger challenge. Currently, the country is suffering from massive, rolling energy blackouts, called “load shedding,” whereby a SOE, called Eskom, cuts power access for hours at a time due to its inability to match the need for electric generation. Several sources indicate that this is a direct impact of the corporate capture of the State, insofar as the Gupta family sold Eskom poor quality coal that, combined with other corruption-related problems, resulted in reduced capacity at Eskom. The Zondo Commission investigated this case,¹⁰⁵ leading political parties to discuss either full privatization or nationalization. However, there have been no legal changes to the structure of SOEs.¹⁰⁶

In the book *State Capture in South Africa. How and why it happened*, author Luke Spiropoulos writes that, “Instead, Sikwebu argues that the origins of the state capture project lie in the corporatist restructuring of state-owned enterprises (SOEs) under Mbeki’s presidency. Sikwebu expressly refers to the Eskom Conversion Act of 2001, which turned the public power utility into a commercial company under the Companies Act. This made the minister of public enterprises the sole shareholder, with control over appointments, and opened space for abuse. Thus, Sikwebu sees the period from 1999 onwards as a pivotal point from which a distinct form of state capture emerged that had not been possible before.”¹⁰⁷

¹⁰⁴ Devi Pillay, Researcher, PARI, Interview on 4 September 2023.

¹⁰⁵ “The Commission investigated a number of SOEs: Eskom, Transnet, South African Airways (SAA) and its subsidiaries, Denel, Alexkor, the South African Broadcasting Company (SABC) and the Passenger Rail Agency of South Africa (PRASA). In the national government, improper conduct impacting on the National Treasury and the Department of Public Enterprises were investigated, as well as the Government Communication Information System (GCIS) and the South African Revenue Services (SARS).” See: Devi Pillay, “The Zondo Commission: A bite-sized summary”, Public Affairs Research Institute, August 2022, <https://pari.org.za/wp-content/uploads/2022/09/PARI-Summary-The-Zondo-Commission-A-bite-sized-summary-v360.pdf>. Pg. 2.

¹⁰⁶ Representative of the management team, Centre for Applied Legal Studies (CALS) (South Africa), Interview on 21 September 2023.

¹⁰⁷ Luke Spiropoulos, “Civil Society in the Face of State Capture: Solidarity and Disharmony”, in Mbongiseni Buthelezi and Peter Vale (Eds.), *State Capture in South Africa. How and why it happened*, Wits University Press, 2023, <https://pari.org.za/new-book-state-capture-in-south-africa-how-and-why-it-happened>. Pg. 134.

2.17.4 Climate finance

Between 2011-20, global climate finance increased twofold, totalling 4.8 trillion USD or an annual average of 480 billion USD. For 2021, estimates indicate that climate finance flows came to 850 – 940 billion USD annually, which is an all-time high. Despite the quantity of climate finance, the quality and geographical parity leave much to be desired. Fossil fuel subsidies alone in 51 major countries during the same period (2011-20) were 40% higher than total global climate investment. Moreover, nearly 80% of climate finance comes in the form of debt, mostly originating in and destined for East Asia and the Pacific, North America, and Western Europe, followed by Central Asia and Eastern Europe. As it were, the majority of Global South countries still do not figure prominently as origin or destination countries for climate finance, save from international donors.¹⁰⁸

Insofar as corporate capture is concerned, these enormous financial flows create numerous challenges, many of which we have listed previously: corruption, diversion of resources, lack of transparency and accountability, and revolving door issues in terms of seeding representative of private interests in institutions where capture occurs. Concomitant problems include the unevenness of flows and resulting economic inequality, the environmental and human rights impacts of the sector, and the entrenchment of fossil fuel companies and SOEs as they capture flows from climate finance but only transition slowly (if at all) to renewables.

For a more detailed discussion, we again refer to the work of Transparency International (Germany, global):

Considering that energy markets and climate finance instruments are embedded in the international financial system, some forms of grand corruption related to climate change policies have a transnational character. (...) For example, in the case of state capture, if it is foreign actors (e.g. multinational firms) that try to exert undue influence on policymaking processes in a particular country, this means that state capture has a transnational aspect. (...)

As with any significant economic transformation, energy transition disrupts the existing power structures and creates new winners and losers. Thus, at the outset, it is important to keep in mind that contextual factors, such as levels of economic development and quality of institutions

¹⁰⁸ Baysa Naran, Jake Connolly, Paul Rosane, Dharshan Wignarajah, Githungo Wakaba, and Barbara Buchner, "Global Landscape of Climate Finance: A Decade of Data," Climate Policy Initiative, 27 October 2022, www.climatepolicyinitiative.org/publication/global-landscape-of-climate-finance-a-decade-of-data.

can influence how powerful political and business interests will react to new constraints and opportunities that the energy transition brings. These factors may intervene and shape the impact that grand corruption has on the efforts to achieve green transition, as well as the likelihood of it materializing. (...)

[As] a capital-intensive sector, energy markets are prone to control by a small number of actors, especially regulators (making it vulnerable to regulatory capture) and government, which can pursue policies that limit the ability of private companies to implement projects. (...) [The] sector is characterised by a close cooperation between political and business actors, which opens a space for collusion between these networks. (...) [It] includes large value public procurement contracts, which are particularly vulnerable to corruption risks.

Climate finance consists of huge money flows, which is attractive to corrupt actors.

Additional characteristics inherent to climate finance may also exacerbate corruption risks, including unclear and changing regulations, improper monitoring, the field's highly technical nature, a spending imperative due to urgency, and others. (...)



Considering the role of international finance, including private sources, one potential challenge refers to the concept of 'concessions for aid'. Namely, donors may require certain concessions in exchange for financing, such as tax breaks or favourable legislation, which increase the risks of state capture with a transnational component. (...) Further, climate finance is a prominent segment of blended market finance. An important challenge of blended finance is the large number of participants and complex financing arrangements which make monitoring much harder. (...) An additional challenge is the different priorities of donors and recipient countries, which may result in projects favouring narrow interests of western donors and firms.¹⁰⁹

¹⁰⁹ Miloš Resimić, "Grand corruption and climate change policies. Overview of grand corruption evidence in energy transition, biodiversity loss and climate finance," CHR. Michelsen Institute / Anti-Corruption Resource Centre / Transparency International, 19 October 2022, <https://knowledgehub.transparency.org/helpdesk/grand-corruption-and-climate-change-policies-overview-of-grand-corruption-evidence-in-energy-transition-biodiversity-loss-and-climate-finance>. Pgs. 4-6, 45-6, and 49.

Across our literature review, a common idea is that consuming countries should provide the tools for compliance, share the costs of implementation, and offer incentives for producing countries to contribute to the energy transition. At the COP meeting in 2022, “Negotiators from nearly 200 countries concluded two weeks of talks early Sunday in which their main achievement was agreeing to establish a fund that would help poor, vulnerable countries cope with climate disasters made worse by the pollution spewed by wealthy nations that is dangerously heating the planet. The decision regarding payments for climate damage marked a breakthrough on one of the most contentious issues at United Nations climate negotiations. For more than three decades, developing nations have pressed for loss and damage money, asking rich, industrialized countries to provide compensation for the costs of destructive storms, heat waves and droughts fueled by global warming. But the United States and other wealthy countries had long blocked the idea, for fear that they could be held legally liable for the greenhouse gas emissions that are driving climate change.”¹¹⁰

Finally, the role of private capital in both fossil fuel and ESG investments in the climate transition deserves more attention. “When the general public experiences a crisis, private capital investors often spy opportunity. They typically invest in distressed assets or exploit price differences across securities, seemingly without regard for collateral damage to people or planet. For example, following divestment in fossil fuels by investors in public markets, private equity investors began to purchase these once-stranded assets at a significant discount, arguably propagating the climate crisis.”¹¹¹

2.17.5 Greenwashing and false solutions

For this horizon scan report, a consistent theme throughout our interviews and literature review is concern that greenwashing of climate-related actions, bluewashing of supposed steps toward a just transition, and false solutions for climate change promoted by businesspeople and politicians offer numerous opportunities for private interests to capture the State. While greenwashing likely requires no explanation,¹¹² false solutions are those that do not address the root causes of climate change or, in fact, make it worse. A brief list of false solutions includes carbon pricing schemes, nature-based solutions, bioenergy, natural gas, hydrogen, waste incineration, nuclear power, purely renewable energy, hydroelectricity, geoengineering, and carbon capture and storage (CCS) technologies.¹¹³

¹¹⁰ Brad Plumer, Lisa Friedman, Max Bearak, and Jenny Gross, “In a First, Rich Countries Agree to Pay for Climate Damages in Poor Nations,” *The New York Times*, 19 November 2022, www.nytimes.com/2022/11/19/climate/un-climate-damage-cop27.html.

¹¹¹ *Runaway Train: The Perilous and Pernicious Path of Private Capital Worldwide*, Empower, 2021, <https://empowerllc.net/en/issues/private-capital>. Pgs. 107-8.

¹¹² G. Grolleau et al, “Changing the world with words? Euphemisms in climate change issues,” *Ecol. Econ.*, 2022, www.sciencedirect.com/science/article/abs/pii/S0921800921003669.

¹¹³ Mary Wildfire, “New Booklet on False Solutions to Climate Change,” *resilience*, 3 May 2021, www.resilience.org/stories/2021-05-03/new-booklet-on-false-solutions-to-climate-change.

According to Mona Sabella from the CAWG, “[ESCR-Net] has an Environmental Justice Working Group to observe aspects of corporate capture and false solutions. Corporations come with false solutions, they say they are doing good for the world and, in reality, they are doing the opposite. They make a lot of money with false solutions. To change corporate capture is to change the system in which these massive corporate powers play the climate agenda. In the past, these same corporations harmed the environment and contributed to climate change. And they continue to do so because they are driven by profit and greed.”¹¹⁴

Climate finance is an area of concern for both greenwashing insofar as carbon targets and ESG performance, for example, as well as false solutions. A recent article by the *Financial Times* highlights a Greenpeace report about green bonds in Brazil and alludes to corporate capture regarding how these instruments were popularized by the government but financialized and profited upon by private interests.

Through August [2023], green and sustainable bond funds recorded \$24.5bn of inflows globally, beating the \$22bn inflow for all of 2022, according to an October report from Bank of America. This demand came amid higher borrowing costs globally and a slowdown in inflows for conventional funds, BofA said. Green and sustainable bond funds now comprise 12 per cent of the wider fund market, up from 10.6 per cent at the end of 2022, the bank said.

As investors gobble up green debt, companies and their underwriters are under scrutiny.



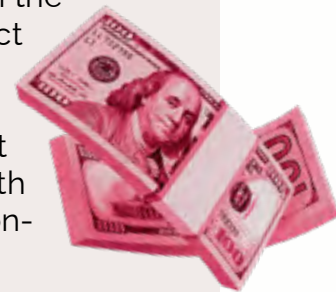
The latest investigation into questionable green debt comes from Uneathed, Greenpeace UK’s investigative journalism division, which shone a light on an obscure corner of the green debt market in Brazil. In recent years the Brazilian government has popularised Agribusiness Receivables Certificates (CRA), which are debt securities issued by a securitisation company backed by agribusiness credit rights, according to a definition by the IMF. But there is little public information available about them. Greenpeace’s Uneathed investigation found that funds raised by CRAs were financing controversial companies including deforesters, land grabbers and ranchers accused of slave labour in Brazil. (...)

¹¹⁴ Mona Sabella, Coordinator, Corporate Accountability, ESCR-Net, Interview on 6 September 2023.

Sustainability-linked bonds have provisions that increase borrowing costs for companies if they fail to hit specified green targets. While initially touted as the “next big thing” in impact investing, SLBs have not achieved widespread use by impact bond fund managers, Morningstar said earlier this year. SLB issuance has dropped 44 per cent to \$12bn this year, according to Morgan Stanley. “We think investors want SLBs to work, but challenges with the structure amidst high greenwashing risk are deterring [companies],” the Wall Street bank said in August.

Increasingly, environmental activists are not the only ones investigating green bonds. Regulators are on the hunt too. In May, the UK’s Financial Conduct Authority launched an investigation of the market for sustainable loans. The FCA started interviewing bankers and borrowers about loans that potentially reward borrowers with lower rates but fail to have a significant environmental impact. (...)

The greenwashing challenges with green bonds fall primarily on banks, which underwrite the debt, but are also big issuers themselves.¹¹⁵



One challenge that came up repeatedly in our horizon scan were business associations or corporate alliances that claim to work towards solving the climate crisis but instead greenwash to promote business as usual and their bottom lines. One recurring name was the Global Battery Alliance (GBA) and specifically its greenwashing activities of transition mineral supply chains in the Congo and Nigeria. In January 2023, the GBA launched the Battery Passport, an initiative to disclose the sustainability metrics and materials provenance of its members’ batteries, which are composed of automotive companies, miners, and electronics manufacturers. Civil society organizations have not been allowed to participate in this initiative and, at the site of mining for these companies’ supply chains, there remain numerous examples of child and forced labor, among other human rights violations.¹¹⁶ The most worrisome capture element of the GBA is

¹¹⁵ Patrick Temple-West, “Companies face intensifying scrutiny over greenwashing,” *Financial Times*, 16 October 2023, www.ft.com/content/81c0fe03-6569-422c-bda9-82f5a9631c57.

¹¹⁶ “Democratic Republic of the Congo: Industrial mining of cobalt and copper for rechargeable batteries is leading to grievous human rights abuses,” Amnesty International, 12 September 2023, www.amnesty.org/en/latest/news/2023/09/drc-cobalt-and-copper-mining-for-batteries-leading-to-human-rights-abuses.

narrative capture; national and international organizations from the U.S. Government to the International Labor Organization (ILO) to the United Nations have lauded the GBA's efforts, effectively creating cover for them to capture and greenwash the narrative about the transition minerals supply chain.

Another example of corporate-sponsored greenwashing efforts is the Taskforce on Nature-related Financial Disclosures (TNFD). According to Mary Beth Gallagher of Domini Impact Investments LLC, "Regarding deforestation, I'm concerned about transparency and traceability insofar as how a company implements its commitment. Companies are good at developing tools for efficiency, but not at protecting human rights and environmental outcomes. There could be corporate capture in the due diligence if the standards assessments are favorable to companies. For example, TNFD is led by companies and investors; there's no civil society presence. It is the main way to assess biodiversity impacts. There is a lot of investment in the reputation of this entity, even though it is ineffective. It is a big example of greenwashing."¹¹⁷

The main problem is that all of the TNFD's 40 members are executives from big corporations and financial institutions. According to the Financial Times, "There's nothing wrong with business executives forming a body to design and lobby for a particular model of reporting standards, or any other sort of regulation. But if that body's output is generally accepted as the global foundation stone for disclosure rules in this space, then there are obvious and serious questions about representation, accountability and conflict of interest." In May 2023, 62 CSOs signed a letter to the TNFD's co-chairs warning that the initiative was "distracting from, and undermining, real and sustainable solutions." Furthermore, the organizations "argued that the TNFD's framework cut companies too much slack on their disclosure of nature-related grievances filed against them, and on transparency around the location of their operations and suppliers." They also warned that such flaws would facilitate "greenwashing" and hamper efforts to hold companies accountable for harm to nature.¹¹⁸

2.17.6 Cases in the Global South

Across the aforementioned sub-categories, the experts interviewed and documents reviewed revealed key challenges of corporate capture as they relate to the climate crisis and energy transition. While useful to be sure, those contributions mostly fit into neat categories. However, so many of the cases studied for this horizon scan defy easy categorization yet offer rich insights. In this subsection we discuss a handful of such cases from the energy sector — mostly in the Global South — and particularly issues of human rights, justice, and North-South and South-South collaboration, important aspects which are often ignored by similar studies.

¹¹⁷ Mary Beth Gallagher, Head of Engagement, Domini, Interview on 31 August 2023.

¹¹⁸ Gillian Tett and Simon Mundy, "How regulators have relinquished their work to corporate executives," *Financial Times*, 20 September 2023, www.ft.com/content/0aa1eb56-f5e4-47d0-9e33-5e5310a3eb1f.

A transversal thread throughout virtually every case involving the energy transition is the division of communities. If the adage of “divide and conquer” can be adapted here, the equivalent would be “faced with a crisis, whose side are you on.” Communities versus workers. Indigenous peoples versus environmentalists. Non-governmental organizations (NGOs) versus social movements. Scientists versus peasants and rural landowners. Who benefits and who bears the burden?¹¹⁹ It’s as if a bomb dropped on communities and, when the smoke clears to find out who’s responsible, the finger pointing begins and each group of actors falls back to their respective trench.

While perhaps similar to other moments of industrial change throughout history, the climate crisis has been anything but a galvanizing moment for all of us affected and impacted by its cultural, economic, environmental, political, and social dimensions. In this void, which includes governments that have also been slow to respond, corporations and investors sense an opportunity to pursue their private interests. The corporate capture of the State is, in many ways, the purest expression of disparate actors sensing an opportunity to take advantage of confusion and division to make a buck or gain influence. As advocates, communities, workers, human rights defenders, philanthropic organizations, and rightsholders, it is incumbent upon us to realize this, unite, and thwart business efforts to profit from crises. We must defend the common good.

Azerbaijan

Situated geographically between East Asia, South Asia, and the Middle East, on one hand, and Western and Eastern Europe, on the other hand, Azerbaijan inhabits a strategic midpoint of the energy transition. In addition to concentrating some of the most important pipeline projects spanning nearly one half of the globe, the country is also a hydrocarbons and renewable energy producer. In other words, the energy transition and Azerbaijan are inextricably linked. If that were not enough, Azerbaijan — a State synonymous with corruption — is responsible for the ongoing ethnic cleansing of the Armenian community, which reached a new nadir in September 2023, as virtually the entire Armenian population in western Azerbaijan was killed or forcibly displaced into territorial Armenia, leading analysts to consider this an act of genocide.¹²⁰

In 1994, Azerbaijan and hydrocarbons major British Petroleum (BP) signed a 30-year agreement to develop Caspian Sea oilfields. Since then, as the country’s largest foreign investor, BP and Azerbaijan have expanded their relationship. In the context of the Russian war against Ukraine and the European energy crisis, both parties agreed to build a huge solar power plant in Jabrayil, part of the Nagorno-Karabakh region where the Armenian population has been displaced. Their goal is to transform the conflict zone into a green energy-producing region.

¹¹⁹ Mary Beth Gallagher, Head of Engagement, Domini, Interview on 31 August 2023.

¹²⁰ Nora Mardirossian and Phil Bloomer, “Conflict and exodus in Nagorno-Karabakh: bp’s urgent responsibilities,” Business and Human Rights Resource Center, 4 October 2023, www.business-humanrights.org/en/blog/conflict-and-exodus-in-nagorno-karabakh-bps-urgent-responsibilities.

The worrisome corporate capture element concerns the role of BP. Ostensibly, it is an ally of the Government of Azerbaijan insofar as energy production and the much more recent commitment to a net-zero future; however, at the same time, its presence and economic agreements effectively legitimize ethnic cleansing. Moreover, the much-touted solar project is a form of greenwashing, as it both distracts from the deep, long-term fossil fuel commits of oil and gas majors and the Government, as well as diverts attention from the regional conflict.

Specifically, the close partnership between the country's president, Ilham Aliyev, his family, and BP has drawn scrutiny.¹²¹ For the corporate accountability movement, which has not paid attention to the conflict, two major concerns should be that the corporate capture of the State has become the default business model in Azerbaijan and that both BP and the Government have ignored basic business and human principles of protection, due diligence, and remedy.¹²² This case illustrates several aspects of capture, as discussed throughout this report: the narrative capture angle, macro-crime and illicit financial flows concerns, diversion of resources, and greenwashing.

India

The case of India presents a conundrum for the energy transition: it is at once a world leader in the energy transition, with ambitious new renewable energy targets of “500 gigawatts of non-fossil fuel capacity by 2030,” and home to the world’s “second-largest new coal pipeline.”¹²³ While perhaps par for the course — most countries worldwide also practice a tandem approach to energy generation —, India is emblematic of the corporate capture of the State in the energy transition writ large.

On one hand, the Modi government has announced “billions in subsidies to manufacture clean-energy technology and wants to become a leading green hydrogen exporter,” which creates an enormous target for those seeking to maximize their private interests. On the other hand, Modi’s administration and prominent economic groups, such as Adani, have already been linked to State capture scandals dating back to when both men began doing business together 20 years ago. Through Adani Green Energy and the Adani Group’s coal companies, respectively, the country’s richest person is an extraordinary beneficiary of government largesse, from subsidies to public contracts. As the “largest private developer of coal power plants and coal mines in the world,” Adani imports and produces domestically the largest share of coal used in India.¹²⁴

¹²¹ James Dowsett, “BBC accused of ‘whitewashing’ autocratic Azerbaijan in BP-sponsored film,” *Open Democracy*, 22 November 2022, www.opendemocracy.net/en/odr/bbc-accused-of-whitewashing-autocratic-azerbaijan-in-bp-sponsored-film/?mibextid=Zxz2cZ.

¹²² Nora Mardirossian and Phil Bloomer, “Conflict and exodus in Nagorno-Karabakh: bp’s urgent responsibilities,” Business and Human Rights Resource Center, 4 October 2023, www.business-humanrights.org/en/blog/conflict-and-exodus-in-nagorno-karabakh-bps-urgent-responsibilities.

¹²³ Benjamin Parkin and Chloe Cornish, “India’s dream of green energy runs into the reality of coal,” *Financial Times*, 25 September 2023, www.ft.com/content/fa254791-4034-4258-a12e-9b8b94edadd1.

¹²⁴ Gerry Shih, Niha Masih, and Anant Gupta, “How political will often favors a coal billionaire and his dirty fossil fuel,” *The Washington Post*, 9 December 2022, www.washingtonpost.com/world/2022/12/09/india-coal-gautam-adani-godda.

Insofar as corporate capture, which in India is most often termed political capture due to politicians seeking to gain influence over the State, the challenge is how to reduce States' dependence on oligarchs, monopolies, and authoritarian leaders and allow democratic economic models to prevail that genuinely favor the renewable energy transition over fossil fuel dependency. In the Indian case, it appears that tight political control and a limited set of known actors is the preferred model.

Indonesia

Nickel — a transition mineral and core input for electric vehicles — is one of Indonesia's key exports. As of 2022, it accounted for half of nickel production worldwide. To extract the mineral, entire forests are often destroyed to access what lies below. Some of the world's largest companies have invested in its production, most notably the Brazilian giant Vale, which "operates three of the top five projects with the highest level of deforestation."¹²⁵

According to the *Financial Times*, "[D]eforestation, coupled with waste, pollution, high carbon emissions and displacement of villages, has put pressure on the government and miners to clean up their act and on carmakers to search for alternative sources of nickel, such as Australia. President Joko Widodo said in March Indonesia would step up scrutiny of the sector and tell companies to reforest depleted mining regions. ... Environmental groups and analysts have warned Indonesia could repeat mistakes made in the palm oil industry, associated with rampant deforestation, unless more steps are taken to protect forests from nickel mining."¹²⁶

In August 2023, the former director general of Minerals and Coal of the Ministry of Energy and Mineral Resources, along with several other officials, was arrested for alleged corruption of nickel ore mining in Southeast Sulawesi, accused of facilitating unlawful mining. According to Publish What You Pay (Indonesia), "This case confirms that corruption in the mineral and coal mining sector is categorized as 'state capture,' where corruption is not merely administrative involving bribes or facilitation payments, but corruption through its roots, namely corruption through regulations."¹²⁷

In addition to the pay-to-play accusations involving State capture, nickel mining in Indonesia is unfortunately a classic case that pits community members against the State's and companies' development interests. In July 2023, *BBC New Indonesia* documented nickel's mining effects on the environment, farmers, and fisherpeople. "In

¹²⁵ Mercedes Ruehl and Harry Dempsey, "Nickel miners linked to devastation of Indonesian forests," *Financial Times*, 7 October 2023, www.ft.com/content/cd1fd7f3-b3ea-4603-8024-db75ec6e1843.

¹²⁶ *Ibid.*

¹²⁷ "Alleged Nickel Ore Mining Corruption Case Affirms Mining Sector Prone to Corruption Category 'State Capture,'" Publish What You Pay - Indonesia (PWYP), 10 August 2023, <https://pwypondonesia.org/en/pwyp-indonesia-alleged-nickel-ore-mining-corruption-case-affirms-mining-sector-prone-to-corruption-category-state-capture>.

order to mine nickel, large areas of trees are cut down and the land is excavated to create open pits. With the roots of the trees no longer present to stabilise the ground, when it rains earth is more easily swept away. Government data shows that in 2022 there were at least 21 floods and mudslides in Southeast Sulawesi. Between 2005 and 2008, before the proliferation of mines, there were two to three per year, according to the National Agency for Disaster Countermeasure. Local conservationist Habib Nadjar Buduha says that when waste material and water are not properly managed, sediment ends up in the sea. ... ‘We don’t have a track record of sustainable mining yet,’ [Novita Indri, a campaigner for Trend Asia, an NGO that promotes sustainable development] says. ‘Indonesia has a lot of homework to do, strengthening law enforcement, increasing emission standards, and implementing environmental regulations.’”¹²⁸

Mexico

Since 2005, ProDESC — a Mexican economic, social, and cultural rights organization — has accompanied communities affected by extractives and other development projects. It employs an integral defense methodology whereby the community and the organization work hand in hand throughout the steps of a human rights campaign. To date, most of its efforts have focused on corporate accountability and land, territory, and natural resources issues, whether with indigenous peoples, rural landowners, workers, migrants, or women.

Two of ProDESC’s cases — one with indigenous farming and fishing communities in Oaxaca and another with rural landowners in the jungle of the Yucatán Peninsula — have taken place within the context of the energy transition. The first involves a wind-farm project in the Isthmus of Tehuantepec, Oaxaca, site of Mexico’s megaproject to create the shortest transmodal shipping corridor between the Atlantic and Pacific oceans. There, Électricité de France — the French State-owned enterprise, known as EDF — sought to build a windfarm on indigenous land in the Unión Hidalgo community without obtaining consent for use of the land.

Following a multi-year community organizing and strategic litigation effort, ProDESC submitted the second case in France using that country’s due diligence law, together with support from the European Center for Constitutional and Human Rights (ECCHR). Though the French court has yet to render a final decision, ProDESC, ECCHR, and the community obtained favorable procedural rulings. More importantly, in 2022, the Mexican Government canceled EDF’s production contracts. Subsequently, an agrarian court recognized that the lands of Unión Hidalgo are not subject to individual ownership.

According to ProDESC, “The narrative of both the State and companies regarding the practice of dispossession of territory and natural assets is to talk about the climate crisis

¹²⁸ Valdya Baraputri, “The rush for nickel: ‘They are destroying our future,’” *BBC News Indonesia*, 10 July 2023, www.bbc.com/news/world-asia-66131451.

without addressing the rights of indigenous or original communities. These businesses continue to pollute, of course, in another way, and advance the energy sector without doing anything for human rights.”¹²⁹ ProDESC’s executive director, Alejandra Ancheita, continued: “In this case, several elements of corporate capture were evident: undue influence on community decision-making processes, the revolving door, interference at the legislative and judicial level, economic diplomacy, and the construction of narratives contrary to human rights, among others.”¹³⁰

The second case, involving rural landowners (*ejidos*) in the Yucatán Peninsula, concerns attempts by the State to dispossess the Dziuché community of its lands in order to develop eco-tourism projects as part of the Mayan Train megaproject, which seeks to join massive fossil fuel projects and tourism sites through a combined industrial and passenger railway. Having initially lost 10,000 hectares without having been consulted, the community asked ProDESC for assistance and filed an *amparo* suit against the expropriation. So far, ProDESC and the community have regained 8,000 hectares and are suing to obtain the rest.

According to Ancheita, “In Yucatán, with the *ejidos*, the current governor of the State of Quintana Roo launched a proposal for ‘social tourism,’ with the idea to cede territories to the state. What she is not saying is that she has an alliance with a civil society group called Friends of Xian Khan that has participation from Carlos Slim [Mexico’s wealthiest individual], which really exists to free up land for companies to take advantage of the Mayan Train project. What they don’t say is that this supposed civil society organization is the one that will supervise and legitimize the projects that end up dispossessing people of *ejido* lands, with 90-year contracts, by decree of the governor, leaving them with few rights. The entire narrative is pseudo-environmentalist, conservation, alternatives to the climate crisis, etc. — in other words, greenwashing to conceal dispossession, essentially leaving farmers with no choice other than to become cheap labor for tourism.”¹³¹

Though both cases were provoked by corporate capture — illegal permits for EDF in exchange for renewable energy development in Oaxaca and astro-turfing and greenwashing in Yucatán — the deeper issue is how corporates and States divide communities and exploit disunity.

South Africa

South Africa is the world’s seventh-largest producer and consumer of coal. Eskom — the State-owned electricity utility — has 15 coal-fired power stations, which produce over 80% of the country’s electricity; however, they regularly break down due to faulty

¹²⁹ Alejandra Ancheita, Executive Director, ProDESC, Interview on 29 August 2023.

¹³⁰ ProDESC, Interview questionnaire, 7 September 2023.

¹³¹ Alejandra Ancheita, Executive Director, ProDESC, Interview on 29 August 2023.

flues and generally purchase less efficient wet coal. One contributing factor to Eskom’s inefficiency — leading to years of frustrating “loadshedding” or rolling blackouts — is the Gupta-Zuma State capture scandal,¹³² which included coal companies owned by the Gupta family supplying inferior coal to Eskom thanks to sweetheart procurement contracts themselves the product of capture.¹³³

According to Devi Pillay of PARI, “Regarding State capture and corruption, the Gupta family had relationships with executives, people in government, and third-party companies. They colluded. They had these relationships in order to obtain high-value contracts, including with the mines that they owned. They also had contracts with consulting firms like McKinsey. It was a lot of money and there was actually no work done. Sometimes they didn’t need to hire a consultant. Thanks to Gupta Leaks there’s evidence of this. Those were the two main drivers: the coal contracts and services with other companies. The Guptas even bought Glencore’s Optimum mine and used their cronies in government to purchase it at a very low price.”¹³⁴

To date, the majority of the academic, CSO, and journalist coverage of the Gupta-Zuma scandal and ensuing investigation focused on the object of capture — the State — and not nearly enough on the economic service providers and other business interests who participated.¹³⁵ And far less has been studied about the practical repercussions of State capture on the country’s hopes for a just energy transition. According to the Centre for Applied Legal Studies (CALS, South Africa), while some middle- or upper-class analyses of the Gupta-Zuma scandal have linked it to the energy crisis, the political discussion has centered on dysfunction within the energy system — South Africa’s extreme dependency on coal to produce electricity and the working-class and popular attention rightly focused on loadshedding.

InfluenceMap (UK), a think tank that provides data and analysis on the impact of business and finance on climate change, and operates a trusted platform analyzing corporate climate policy lobbying, released a report stating that “South Africa has faced challenges in the development of climate policy. The [Intergovernmental Panel on Climate Change] IPCC has identified ‘opposition from status quo interests’ and incumbent fossil fuel interests ‘exerting political influence’ over the policymaking process as a key reason for the lack of progress on global climate policy. ... Steps from the South African Government to improve transparency and governance of climate policymaking processes, including holding private entities to account for either knowingly block-

¹³² South Africans insist that the term corporate capture does not properly recognize the work of the Zondo Commission and the whistleblowers, CSOs, lawyers, and journalists who uncovered the country’s deep-seeded corruption and still insist on justice and reform. They say political capture of the State — or simply State capture.

¹³³ Devi Pillay, Researcher, PARI, Interview on 4 September 2023.

¹³⁴ Devi Pillay, Researcher, PARI, Interview on 4 September 2023.

¹³⁵ Representative of the management team, Centre for Applied Legal Studies (CALS) (South Africa), Interview on 21 September 2023.

ing science-based policy or for greenwashing, could also have systemic and positive impacts on the development of climate policy in the region. InfluenceMap’s global analysis has often found a strong correlation between a failure by governments to act on climate, and a powerful fossil fuel lobby alongside limited transparency around the policy process, resulting in ‘policy capture.’”¹³⁶

The fate of the just transition in South Africa, it would seem, depends on the country’s ability to dig itself out from State capture — including from the private interests that propagate capture —, turn the tide politically, and transparently invest in renewable energy solutions that adhere to environmental and human rights best practices.

¹³⁶ “Climate Policy Engagement in South Africa. Analysis of South African industry’s advocacy on climate-related policy and the energy transition,” InfluenceMap, February 2023, https://influencemap.org/site/data/000/021/SouthAfrica_Report.pdf. Pgs. 3, 8.



3.

CORPORATE
CAPTURE:
**OPPORTUNITIES,
STRATEGIES, AND
INNOVATIONS**

3.

CORPORATE CAPTURE: OPPORTUNITIES, STRATEGIES, AND INNOVATIONS



In democratic systems we try to limit the extent to which [businesspeople, or Bs] can further their own interests, and seek to ensure that [public officeholders, or Ps] make policy in ways that reflect the wider concerns of the general public. In so doing, democracies are helped by a third type of actor, whose purpose is to hold power to account. Let's call them As, for accountability. They include institutions like the judiciary and the state audit institution, and independent regulators on the conduct of those in public life; they might be enshrined in the constitution and receive funding from the state, but their function is to keep power in check and act as an independent arbiter. In addition, some As are outside the state, such as civil society organizations and journalists.

The As mainly monitor the behavior of Ps to keep them on track with serving the public interest, but they may also watch for signs that Bs are abusing the power entrusted to them by virtue of their being powerful actors in our economies and societies. ... Corruption is best controlled by keeping these three types of actors in equilibrium.¹³⁷

In the Global South, institutional control mechanisms function according to a different logic than in the Global North. Institutional arrangements in the Global South usually depend on more volatile political factors that respond to social and cyclical demands, including anti-systemic ones. In the Global North, the so-called rule of law usually obeys the logic of financial capital. For this reason, strategies for change need to be anchored in this modus operandi which, for many experts, is more creative and innovative than the traditional arrangements of the Global North. ... Thus, strategies with a more significant impact must include components of political and social articulation in partnership with researchers and experts directly involved in these territories.¹³⁸

¹³⁷ Elizabeth David-Barrett, "State capture and inequality," Pathfinders for Peaceful, Just and Inclusive Societies, December 2021, https://s42831.pcdn.co/wp-content/uploads/1662/65/cic_pathfinders_state_capture_inequality-2021.pdf. Pgs. 16-7.

¹³⁸ Conectas (Brazil), Interview questionnaire, 21 September 2023.

The corporate capture of the State portends enormous challenges for the corporate accountability movement and rightsholders, regulators and other public officials, businesses and markets, and the common good in general. Year after year, its insidiousness seems to worsen as its pervasiveness seeps into every corner of society — from Covid-19 medicines to renewable energy projects, from financial regulators to judges, and from labor inspectors to presidential palaces. Similarly, the gaps to address and stop it also seem bottomless — from legal loopholes to lack of political will, from the tiny print on public contracts to the bold text of constitutions. To be certain, we have a long way to go before this feature of advanced capitalism and the neoliberal order becomes just a bug in the system and then a fading externality and, finally, withers away as nothing but a refuge from our past.

But the landscape before us is far from hopeless. In fact, there is reason for optimism. Ahead lies a stakeholder economy that prioritizes the common good. To get there, as funders, civil society organizations, advocates for fair markets and progressive industrialism, and proponents of political economy reform that prioritizes human rights and democratic economies we must identify opportunities to correct course and harness the strategic innovations that are already at work, however incipient or isolated they may be at this moment.

As both responses and solutions to the numerous challenges and gaps presented in the previous chapter, in what follows we identify opportunities for interventions at scale — mainly by States — to better orient governments and policy-makers, both globally and transnationally. We also identify the innovations and strategies for concrete interventions that are already in play — mostly by civil society organizations but also some regulators — to tackle corporate capture. These numerous forward-looking interventions offer tangible, upstream opportunities to bridge the abyss from whence we came to the new economic paradigm we hope to achieve. To be sure, many of these interventions hold potential for adaptability and scalability in other sectors and geographies across the world.

For this chapter, we asked interviewees the following questions so as to initiate a broader discussion:

Opportunities

- What opportunities are emerging in relation to developments in the finance sector as well as around the energy transition, for example regarding climate finance and taxation?
- How should we understand the latest trends in the financial sector, such as increasing stock buybacks? Are there specific trends infringing on open societies that we should target for maximum impact?

- What opportunities exist on a global or transnational level to build a robust response to extraordinary and rapidly increasing levels of corporate profit in the context of systemic failures to distribute profit fairly, such as a global windfall tax?
- Are there opportunities to be seized vis-à-vis trade, industrial, or labor policy?
- Knowledge and understanding of the corporate capture of the State is highly uneven across CSOs and the field of organizations working on these issues is limited. In light of this as well as regional dimensions and potential policy levers, where could philanthropic engagement have the biggest impact? To what extent should an effective approach focus on particular sectors of concern vs. broadly fighting the corporate capture of the State?

Strategies and innovations

- Who is driving cutting edge work tackling the corporate capture of the State, particularly at the transnational level?
- What are concrete examples or case studies of prior work that has been effective in tackling the corporate capture of the State? What factors have made that work successful and, based on those factors, what insights do the examples reveal that may be relevant for future work?
- How does the social justice agenda with respect to work on corporate capture and corporate accountability differ from region to region? What strategies or levers for change have the greatest potential for impact in the Global South? Where is the greatest need for additional transnational collaboration across countries or regions?
- Much of the regulatory work must take place at the national level. What interventions at regional or global levels hold the greatest potential to advance change at scale?

3.1 Philanthropy

A critical actor within the corporate accountability movement are the philanthropic donors that provide grants, seed capital, and other forms of financing for civil society grantees, partners, and ecosystem members. Without their support, there simply would not be as much reason for optimism that, as a movement, we can achieve our goals. Throughout our horizon scan, interviewees emphasized the significance of philanthropy for anti-corporate capture strategies. However, some mentioned that funding from certain organizations may attract unwanted attention from politicians, who may perceive it as undesirable influence or intervention.

The Trust, Accountability, and Inclusion Collaborative (TAI), a network and platform for funder learning and action, conducted a review of databases, documents, and websites from both funders and field organizations to gain an understanding of the state of philanthropic and public funding for anti-corporate capture work. The results revealed that corporate capture is not a commonly used lens by most philanthropies, governments, and multilateral institutions, particularly when describing projects. Capture terminology is predominantly used within networks of social activism. Preferred projects for funding are those that employ terms such as “corporate accountability” or “corporate transparency.” Overall, most funding tends to be neutral or completely opposed to the anti-corporate capture viewpoint, often supporting the facilitation of private sector development. It is crucial to note that any actual funding primarily goes to organizations based in or operating from the Global North.¹³⁹

Among the top-level, non-programmatic observations for philanthropy in general, our interviews and literature review indicated a few dynamics worth mentioning:¹⁴⁰

- **Philanthropic capture / Capture of philanthropy:** Any organization, such as a non-governmental organization, trade union, or university, for example, can be captured by corporate or other private interests. In turn, such organizations can contribute to capturing others. Philanthropy is no exception. When scanning for anti-corporate capture strategies and innovations, we would be wise to consider whether this dynamic is already at play insofar as funding for specific programming but also at the geographic and sectoral levels.
- **Decentralize funding:** A common thread throughout our readings was, at first blush, the paucity of organizations in the Global South with explicit anti-corporate capture programming or even mentions of capture. When we did interview anchor organizations that, to a one, conduct programming in this regard, we found all of their analyses and contributions timely and relevant, and we included them throughout this report. However, upon exploring this question in interviews, we realized a combination of factors inhibits some organizations from overtly doing more on capture, as follows:
 - **Self-censorship:** In interviews, almost every organization recognized capture — whether corporate, political, or State — as a problem. However, a few organizations expressed concern that mentioning or alluding too closely to capture could endanger their standing with the governments of the countries where they are based or with other funders.

¹³⁹ “Trends in Funding to Anti-Corporate Capture Scan”, Trust Accountability & Inclusion Collaborative (TAI), December 2023, https://api.transparency-initiative.org/uploads/Trends_in_Funding_Anti_Corporate_Capture_8191314bc7.pdf. Pgs. 12-14.

¹⁴⁰ Please note that, by design, any programmatic ideas or recommendations are interspersed throughout this report as opportunities, strategies, and innovations, without specifically mentioning philanthropy.

- **Different framing:** The majority of organizations analyze, discuss, and ultimately frame capture differently than, say, a standard “corporate capture of the State” definition as presented in this report. Therefore, different conceptualizations of the phenomenon can lead to the exclusion of some actors conducting adjacent but not exact programming in this regard.
- **Inertia vis-a-vis anchor organizations:** The logic of funding anchor organizations to concentrate, lead, and even occasionally re-grant funding to other organizations may centralize programming — likely unintentionally — in such a way that other, often newer, or smaller organizations, social movements, and community-based groups might be excluded from receiving funding to conduct programming on capture.

For philanthropy, it would be wise to consider how to mitigate these factors, including dedicating significantly more philanthropic resources to this work in general, decentralizing current grantee resources and power to include additional organizations, and/or expanding the number of anchor organizations to cover a greater variety of organizations and regions.¹⁴¹

- **Anti-corporate capture funding beyond region or climate:** Some interviewees mentioned that funders have consolidated their offices and funding streams away from countries such as Mexico and South Africa so as to focus on North America and Africa as regions, for example. Others mention that climate-specific funding has incentivized some organizations to create programming in this area to ensure continued funding, or has excluded others whose work does not include climate or the energy transition. Regarding corporate capture, it would be wise to consider the breadth and depth of opportunities, strategies, and innovations in this report, many of which may not fit neatly into regional or thematic baskets.

Conectas, a leading corporate accountability organization globally, based in Brazil, offered the following consideration that merits attention:

Philanthropy can have a greater impact by encouraging the exchange of learning between [CSOs] since it must be aware of similar or complementary activities that its grantees carry out, not least to avoid duplication of effort and work. So, perhaps an earlier step is: philanthropy can put direct resources, deliverables, or products towards building knowledge and

¹⁴¹ See Pamela Paul's recent piece: "To those concerned with social inequity, 'the elite' symbolize a flawed meritocracy. In their view, certain demographic groups get elevated over others and bar access to those historically deprived of power, especially political and economic power." Pamela Paul, "The Problem With 'Elites' May Not Be What You Think It Is," *The New York Times*, 7 September 2023, www.nytimes.com/2023/09/07/opinion/elites-blm-police.html.

consolidating the lessons learned from its projects. For example, there could be support for creating or improving tools to systematize learning, creating a collective and institutional memory of lessons learned and challenges overcome, which could be shared. The exchange of learning, knowledge, and expertise on the reactions to corporate violations — especially at a macro level — which will allow for better mapping of who to turn to in specific situations is also necessary, especially for organizations in the Global South which, in addition to unstable political scenarios, have to deal with a shortage of resources and personnel to individually handle all the demands that arrive.

It is also of the utmost importance to support mechanisms or structures that allow civil society to anticipate the start of corporate capture so that it can carry out prior and simultaneous work at a local level — with communities, alerting them to corporate strategies and mechanisms for resistance and denunciation — and at a macro level, preparing advocacy work of proposition or opposition, and structuring legal strategy that can confront the harmfulness of corporate activity. To this end, support for appropriating technological mechanisms and knowledge that is still very much restricted to the corporate world — such as artificial intelligence or understanding the logic of financialisation — is necessary. It could also be of great importance for philanthropy to help [CSOs] to build an infrastructure of capacities and connections to go deeper in corporate litigation so that organizations can consider more and more this strategy by mitigating the risk inherent in it.¹⁴²

3.2 Integral civil society strategies

Several civil society organizations around the world already dedicate a large portion of their programming to address corporate capture head-on. For purposes of our horizon scan, Empower considers these as anchor organizations. Overall, the spectrum of CSOs included in our scoping is broad and diverse. Many of the groups whose work we studied fall into the corporate accountability, anti-corruption, transparency, human rights, or environmental baskets, or a mix thereof. Yet others were academic or university-based, data or investigative journalists, or development-focused think tanks.

¹⁴² Conectas (Brazil), Interview questionnaire, 21 September 2023.

Some non-civil society organizations form a part of the ecosystem, too, albeit in smaller proportion to CSOs, including governmental institutions and social enterprises.

In general terms, the milieu of Global South actors in the anti-corporate capture space includes human rights organizations, environmental groups, journalists, legal clinics, and similar schemes that accompany communities, workers, and other stakeholders directly affected by business activities. These organizations do essential work to challenge the corporate capture of the State, as their expertise in the field enables them to connect community defense with global trends. They work in countries with severe institutional challenges and where there is a risk of violence against human rights defenders; however, their resources are limited, especially in comparison to similar organizations in the Global North.

Affected stakeholders — primarily communities, workers, and other rightsholders — face the greatest challenges of corporate capture and impunity, due primarily to structural inequalities. These same groups also bear the burden of the most difficult human rights work, often in violent settings and with even more limited access to resources.

Similarly, in general terms, the Global North actors are also human rights organizations, environmental groups, anti-corruption watchdogs, journalists, legal clinics, and similar groups, whether working at home or abroad. These organizations tend to have a relatively high level of security vis-a-vis reprisals for their activism, access to wider resources, and proximity to power centers, such as corporate headquarters and investors, international bodies, and funders. In this regard, Global North actors can play an important role in ground-truthing, lifting-up voices from the Global South, or creating visibility for cases before strategic and wider audiences.

3.2.1 Global South anchor organizations

Based on leads, recommendations, and frequency and quality of mentions generated from our interviews and literature review, Empower included three Global South groups — PODER (Mexico), the Initiative for Transnational Justice (ITJ, Mexico), and the Civil Society Working Group on State Capture (CSWG, South Africa) — as anchor organizations whose work largely tackles the corporate capture of the State. Of course, there are numerous others worldwide whose work also addresses, challenges, or responds to corporate capture dynamics. However, in most cases, this is not the predominant part of their ethos or programming. In their cases, we include numerous references to their work as part of our subsequent discussion of specific opportunities, strategies, and innovations.

It is worth mentioning that some Global South groups, for example anchor organizations in adjacent fields, such as human rights or the environment, which may or may not already work on aspects of capture, could adapt their programming to explicitly address corporate capture. Examples of such organizations include:

- Cajar (Colombia) (www.colectivodeabogados.org)
- CALS (South Africa) (www.wits.ac.za/cals)
- Center for Legal and Social Studies (CELS) (Argentina) (www.cels.org.ar/web)
- Conectas (Brazil) (www.conectas.org)
- Empower (Mexico) (www.empowerllc.net)
- PARI (South Africa) (<https://pari.org.za>)

Project on Organizing, Development, Education, and Research (PODER)¹⁴³

PODER (<https://poderlatam.org>) is a Mexico-based, non-governmental, corporate accountability and human rights organization, founded in 2010, that works nationally and regionally — and increasingly globally — to “advocate for corporate transparency and accountability in Latin American countries from a human rights perspective, and empower civil society actors affected by corporate practices to serve as the main advocates of accountability in the long term.” Upon its founding, it was the first organization in Latin America to conceptualize its work as corporate accountability and identify the corporate capture of the State as the root cause it sought to change. Since then, it has endeavored to incubate and support the development of a regional corporate accountability movement.

Per its vision statement, “The main problem we are trying to solve is the capture of the State by economic and political elites that control public decision-making, effectively limiting the development of democratic economies for the rest of society. We believe that these elite actors have taken over politics and national economies for their own benefit and, consequently, the rule of law and incipient democratic mechanisms fail to hold them accountable. As citizens, communities, and civil society organizations we must pressure government and business actors to correct this power imbalance.”

Essentially, PODER’s strategy begins with research, which leads to accompanying collective organizing, which in turn leads to advocacy and litigation together with communities and other affected stakeholders, all while using information tools to catalyze change by shaping the public narrative about corporate capture. PODER works with local communities affected by non-offshorable industries, including the extractives, infrastructure and transportation, and heavy manufacturing sectors. Additionally, it pri-

¹⁴³ Full disclosure: Benjamin Cokelet — one of the authors of this report and currently the founding executive director of Empower — is the founder and, for 10 years, was the executive director of PODER.

oritizes projects in global cities, specifically in the financial, insurance, and real estate sectors, where economic and financial remediation mechanisms have a greater impact on communities.¹⁴⁴

Regarding corporate capture, which is a transversal part of its programming and a main objectives of its *raison d'être*, PODER deploys several innovations,¹⁴⁵ as follows:

Research

- **Corporate capture:** PODER has produced several capture-specific reports over the years, including:
 - “Conceptualizing State capture in Latin America and Assessing its Impacts on the Extractive Sector”:¹⁴⁶ <https://poderlatam.org/wp-content/uploads/2022/04/StateCaptureInLatinAmerica.pdf>. Recommendations:
 - Make State capture visible and adopt a contextual methodological model for research and study (more research instruments and analytical tools, analysis on gender differentiated impacts, and use of big data tools and new technologies developments).
 - Design and implement tools to monitor and red-flag public sectors vulnerable to State capture (create communication channels of information about extractive sector obligations, build proposals for identifying public sector structural weaknesses, expose all government instances “targeted” by State captors, develop a public registry of political consultants and think tanks conducting lobbying practices, and construct and disseminate media narratives about the inconvenience of informal links within elites members and public servants).

¹⁴⁴ Its main strategies are:

- “Conduct corporate research on strategic industries to highlight patterns of State capture and human rights violations by companies. This is done to reduce information asymmetry and refine accountability and access to justice strategies for communities and workers affected by corporate activities.”
- “Support organizational processes and legal strategies for community organizations whose rights have been affected by corporate misconduct. PODER promotes the strengthening of their capacities to defend their rights so that they can become agents of long-term change.”
- “Engage with and influence decision-makers, investors, and communities at the national, regional, and international levels to improve regulation and practices within the private sector, as well as to facilitate access to justice and prevent harm.”
- “Develop platforms and technological tools that promote data openness about the private sector and its interactions with the government. This includes databases, visualizations, and information filtering platforms like Méxicoleaks, Perúleaks, and Chileleaks. Additionally, through journalism and external communication strategies, PODER seeks to explore narratives that effectively and comprehensively expose State capture to a broad audience, thereby exerting pressure on companies, investors, and regulators.”

¹⁴⁵ Mariana Gutiérrez, Gina Chacón, Julieta Lamberti, and Omar Escamilla, “Los beneficiarios reales de las industrias extractivas en México. Minería e hidrocarburos,” PODER/Oxfam México, July 2019, <https://poderlatam.org/wp-content/uploads/2020/02/InformeBeneficiariosReales.pdf>.

- Change the norm (promote laws that regulate and make lobbying transparent, that observe and regulate “revolving door” practices and promote “cooling off,” that regulate the elite’s control and ownership of the media, that guarantee universal access to information about high-impact extractive industry projects, that guarantee environmental and human rights protection, that promote and to guarantee free access to multi-stakeholder natural resource governance initiatives, and that guarantee universal access to justice through due diligence mechanisms and commitments).
 - Build a global movement against State capture (full and public commitment from different stakeholders to guarantee civic space conditions, strengthen communities’ and CSOs’ capacities, more watchdog initiatives, implement safe community informative meetings and harmonize global agendas).
 - Corporate interference and State capture in the energy sector: <https://poderlatam.org/project/reforma-energetica>.
 - Interlocking corporate directorates and State capture: <https://poderlatam.org/en/project/interlocking-directorates>.
 - Mexican Council of Businesspeople and State capture: <https://poderlatam.org/project/consejo-mexicano-de-negocios>.
- **Beneficial ownership:** “In the process of defending the territories and human rights of indigenous peoples and original communities, it is essential to know who exercises control and benefits economically from extractive projects. This not only reduces the information gap between companies and society, but also directs efforts to strengthen collective power — against companies and municipal, state, and federal authorities — and influences the integral defense of communities.”
- **Follow the money:** “Strategic corporate research also enhances accountability for companies that make up the value chain of a project and allows tracking the misuse of public resources or identifying possible cases of corruption, tax evasion, illegal activities, and money laundering. This, in and of itself, is a fundamental task to increase corporate accountability...”

¹⁴⁶ Daniel Castrejón and Óscar Pineda, “Conceptualizing state capture in Latin America and assessing its impacts on the extractive sector”, PODER, May 2021, https://poderlatam.org/wp-content/uploads/2022/04/CapturaDelEstadoEnAmericaLatina_resumen.pdf.

- **Research methodologies:** PODER employs three main strategic research tools: 1) power mapping, 2) vertical analysis, and 3) horizontal analysis.¹⁴⁷

Data transparency, analytics, technology, and visualization

PODER created and hosts the largest open data source of businesspeople, companies, and procurement data in Latin America — called Quién es Quién Wiki (QQW) —, including hundreds of thousands of individual and corporate entries and millions of public contracts: <https://poderlatam.org/en/project/quienesquien-wiki>. This project has been replicated and scaled throughout the region, and it forms the data technology backbone of journalism projects that focus on corporate capture (see subsequent sections of this report). QQW is the technological adaptation of foundational academic research, conducted between 2009-13, which identified corporate interlock as the primary mechanism by which the business association the Mexican Business Council captured and continues to capture the State, since as early as 1959 (<https://poderlatam.org/project/consejo-mexicano-de-negocios>).

Data and investigative journalism

Virtually all of PODER's and QQW's journalism projects and spin-offs have a corporate capture focus, including: MujeresEnLaBolsa.org, Red Palta, Torre de Control TodosLosContratos.mx, and Salud, Dinero y Corrupción.

Advocacy

As the entirety of PODER's advocacy projects focus on corporate capture, we have selected three that are collaborative and global in nature.

¹⁴⁷ 1) Power mapping: "Helps to understand the actors related to an extractive project and the power relationships among them. It aims to analyze the influence not only of those who are directly involved in a company or investment project — such as shareholders, executives, and subsidiaries — but also the influence exerted by actors apparently external to the project — such as creditors, financiers, suppliers, and customers. (...) The power map should include information about who makes decisions in these companies and the beneficial owners. It should also include companies that have an interest in the project due to commercial relationships and, finally, indigenous peoples who could be affected by corporate activity, for example. ... When developing the power map, it is essential to consider not only the magnitude of the power being exercised but also whether the pressure favors or hinders a project's development. (...) To complete this exercise, it is important to analyze the hierarchies and levels of influence that a company or a group of companies have within an industry and identify their relationship with political power at the local, state, or federal level."

2) Vertical or hierarchical analysis: "Refers to mapping the corporate structure of a company or corporate group, as well as its major shareholders or liabilities (i.e. debts). Its ultimate goal is to identify the individual(s) who control or benefit from the company. (...) In most cases, corporations maintain hierarchical structures. For example, a corporate structure based on business units would be composed of a holding company (public or private) with subsidiaries that in turn organize other subsidiaries within a business unit."

3) Horizontal or supply chain analysis: "This involves identifying critical nodes within the supply chain of a company or project. In other words, it means tracing the major economic agents who engage (or would engage) in economic activities with the company or project at each of its stages, from inputs to the end sale to customers or final beneficiary. (...) It is necessary to map all suppliers, distributors, and customers and identify the influence that each of these actors exerts on others in the supply chain."

- **EITI:** PODER is a co-founder of EITI in Mexico, co-founder and coordinator of the Civil Society Working Group on EITI México, and a global board member of EITI. It has consistently stated that the objective of its EITI participation is to achieve beneficial ownership transparency as an obligation for States and corporates, both in Mexico and globally, as a prerequisite of the kind of transparency needed to expose corporate capture.
- **Mind the Gap:** PODER is a co-founder of this CSO coalition, hosted by SOMO, which also includes Conectas and eight other organizations, that deploys research, training, and advocacy to “create a system whereby businesses can no longer avoid responsibility for negative human rights and environmental impacts.” Among other efforts, Mind the Gap submitted a historic submission to the U.N. Working Group on Business and Human Rights (UNWG) in 2021 exposing the corporate capture of the UNWG, which opened a Pandora’s Box of criticism by other observers and participants in that process.¹⁴⁸
- **Binding Treaty on Business and Human Rights:** In Mexico, PODER coordinates the Civil Society Working Group on Business and Human Rights (*Grupo Focal*), which advocates vis-a-vis the Mexican Government, regional spaces, and globally, for implementation of obligatory corporate transparency and accountability mechanisms, namely the Binding Treaty. The Grupo Focal pro-actively endeavors to include mechanisms to stop the corporate capture of the State in these processes.

Initiative for Transnational Justice (ITJ)

The ITJ (<http://ijt.global>), established in 2021, is a Mexico-based, non-profit transnational justice organization. It was founded by ProDESC, but it is a wholly-separate entity that builds upon the organization’s two decades of experience in the corporate accountability and human rights fields. The Initiative aims to ensure transnational justice and accountability through genuine collaborations with counterparts in the Global South that defend economic, social, and cultural rights. It serves as a platform to provide a distinct opportunity for affected communities, collectives, and grassroots organizations from the Global South to generate cases and campaigns through a feminist, communitarian, intersectional lens.

At its core, ITJ’s model posits an important question: If human rights are universal but accessing them is impeded by multinational corporations and their global supply chains, why do mechanisms to access justice still depend upon State-level tools? Its answer to this question is precisely the corporate capture of the State, which the Initiative identifies as the root cause limiting access to justice for human rights defenders and rightsholders.

¹⁴⁸ “Mind the Gap submission on corporate capture to the UN Working Group on Business and Human Rights,” Mind the Gap, 2 December 2021, www.mindthegap.ngo/mind-the-gap-submission-on-corporate-capture-to-the-un-working-group-on-business-and-human-rights.

The Initiative was founded at a time when corporate accountability surged as a relevant field in human rights, including the creation of due diligence, international grievance, and similar mechanisms, some with extraterritorial applications. In advanced capitalism, this means protecting individuals and groups located mostly in the Global South from business activities implemented by corporations located mostly in the Global North. Consequently, the impact of corporate accountability should be felt more acutely in the Global South — as with the case of the root cause undermining it, corporate capture — where it actually changes the realities of communities and collectives.

Notwithstanding, corporate accountability interventions using these mechanisms and policies are often dominated by experts and CSOs in the Global North and the voices of those affected are seldom present. Moreover, philanthropic funding tends to flow to actors in the Global North, many of whom conduct programming and other “field work” in the Global South without changing the day-to-day reality of those who live there. Additionally, the implementation of these strategies, albeit unintentionally, has on occasion increased reprisals against grassroots human rights defenders.

In reflections between the ITJ and Global South allies, they have prioritized building South-South collaborations. While there are enormous cultural differences between countries and communities in the Global South, there are also many similarities about how they defend people and planet against corporations, providing common ground to form stronger alliances.¹⁴⁹

In order to structurally change the impacts wrought by corporate capture, the ITJ believes that corporate accountability must have concrete effects on the ground, particularly in the territories and collectives located in the South that are most affected. This will lead to the limitation, prohibition, or cancellation of corporate activities that cause human rights violations and even achieve reparation for communities and collectives.¹⁵⁰

Furthermore, the construction of South-South collaborations and the construction of a strong Global South-led movement will deter the worst human rights violations that result from corporate capture. Both governments and corporations will rethink their actions if they know that there is a strong movement acting as a counterweight, ready to defend human rights across the Global South.

¹⁴⁹ “[The ITJ] considers that the transnational collaborations with the greatest potential are South-South, that is those that directly involve organizations, communities, and groups from Latin America, Asia and Africa without the need for ‘intermediary’ organizations in the Global North. On one hand, increasingly organizations in the South have more capacity to reach spaces for discussion at regional and transnational levels and, on the other, they conduct solid, serious work on the ground with the communities and groups that suffer most from the consequences of corporate capture.” See: ITJ, Interview questionnaire, 7 September 2023.

¹⁵⁰ In order to achieve durable transnational collaborations, the Initiative’s main activities include: Providing legal services and advice to communities and groups affected by multinational corporations; Promoting collective learning spaces; Supporting the safety of human rights defenders at risk; Conducting strategic corporate research about businesses violating human rights; Organizing meetings, workshops, and reflection spaces for legal strategizing; Implementing advocacy strategies to improve business and human rights frameworks; and Supporting grassroots groups to secure funds and resources.

Currently, the Initiative works with communities, collectives, and their CSO partners in six countries of the Global South to tackle corporate capture head on through transnational collaborations and corporate accountability. These projects include:

- **Argentina:** The Initiative has participated in an observatory mission to watch and denounce violations of indigenous peoples' rights occurring in Jujuy, in northern Argentina, where they live in an area rich in lithium. The local government — captured by corporations — is actively trying to displace the communities in order to jumpstart mining projects.
- **Brazil:** Working with Brazilian organizations such as PACS, the Initiative has been supporting a series of agrarian communities located in the State of Bahia that are defending their land, territory, and natural resources from nefarious wind energy projects funded by French and Norwegian corporations. The Brazilian Government has recognized that these communities have the right to free, prior, and informed consent, but this right has been violated. The Initiative is holding meetings with communities and local NGOs in order to design a transnational strategy to hold these corporations accountable in their home countries.
- **Chile:** Working with Mapuche representatives and their lawyers, the Initiative has supported the defense of land, territory, and natural resources of communities located near the Pilmaiquén River where several corporations have expressed interest in building hydroelectric dams. Currently, a Norwegian corporation is planning the construction of a dam that would permanently flood Mapuche land and territory and, with it, sacred lands. The Initiative has supported these communities with the presentation of a complaint before the Norwegian OECD National Contact Point as part of a larger corporate accountability strategy.
- **Ecuador:** The Initiative has provided security assistance to members of an independent trade union who have suffered death threats and other acts of violence for defending their labor rights.
- **Mexico:** The Initiative has worked closely with ProDESC in order to analyze and support communities defending their rights to land, territory, and natural resources from mining projects and solar power plants.
- **South Africa:** The Initiative has provided assistance on community-based security measures for several organizations that have been targeted by a paramilitary group for defending their human rights.

Civil Society Working Group on State Capture (CSWG)

The CSWG on State Capture in South Africa (www.opensecrets.org.za/what_we_do/advocacy/civil-society-working-group-on-state-capture), founded in 2018, is a coalition of 23 CSOs that supports and strengthens the work of the Zondo Commission, the public inquiry that was initially created to investigate the Gupta-Zuma corruption scandal. The non-profit organization Open Secrets acts as the coalition's secretariat. The strategy of forming a public-facing group of CSOs to collaborate with the Zondo Commission and hold it accountable, as well as the deep academic, research, and litigation expertise of its organizational members, has resulted in a unique innovation for how non-State actors can expose and help stop State capture. We must remember that, in South Africa, the term political capture of the State — or simply State capture — is a more apt description than corporate capture, which, with the exception of the CSWG's work, remains underexplored in that country.

According to its website, “The Working Group has achieved [oversight of the Zondo Commission] through various means using advocacy, engagement with the commission and by making over 15 evidence-based submissions to the commission. In addition to this, the Working Group successfully held the first People’s Hearing on State Capture which was created to openly engage with the public and hear evidence of how state capture has impacted on lives. The findings made by the panel presiding over the People’s hearing were shared with the commission in November 2019 and serves as a powerful reminder to all of what the human cost of state capture has and continues to be. In February 2020, the working group submitted an Agenda for Action: Joint submission with recommendations geared at strengthening the findings of the commission and notably calls on Judge Zondo to release an interim report given its extension-this will assist to bolster accountability. The Working Group continues to advocate for the implementation of its joint submission recommendations as well as maintain oversight over the commission, law enforcement agencies and the private sector ‘enablers of state capture’.”¹⁵¹

One of the CSWG’s most notable contributions was organizing the People’s Hearing on State Capture, in October 2019, which featured public testimonies by witnesses and victims of State capture. It was chaired by the international criminal justice expert, Yasmin Sooka; gender and political activist, Nomboniso Gasa; and Xolobeni human rights defender, Nonhle Mbuthuma.¹⁵² Its final recommendations identified five areas that require critical attention:

- Strengthening and building the capacity of criminal justice agencies;
- Holding enablers of State capture to account;

¹⁵¹ “Civil Society Working Group on State Capture,” Open Secrets, n.d., www.opensecrets.org.za/what_we_do/advocacy/civil-society-working-group-on-state-capture.

¹⁵² *Ibid.* Pg. 6.

- Improving the financial accountability of political parties through amended regulations;
- Addressing the endemic nature of corruption in State-owned enterprises; and
- Addressing the impact of corruption and how it undermines the fundamental rights of vulnerable groups.¹⁵³

Similarly, in “An Agenda for Action: A Joint Submission by the Civil Society Working Group on State Capture,”¹⁵⁴ in February 2020, the CSWG outlined recommendations for the protection of the rights of vulnerable groups, including transparency and accountability in public procurement processes and whistleblower protections. Also, regarding SOEs, it recommended revising the appointment and dismissal processes of company executives, transparency and accountability insofar as SOEs’ relationships with other parts of the State, political party accountability as well as regarding the role of Parliament, and interrogating the use of “emergency conditions” to initiate procurement deals.

Regarding corporate capture, “An Agenda for Action” recommended investigating all implicated parties, legal reforms — including addressing regulatory gaps for holding private actors accountable for unlawful conduct (both globally and in country) and South Africa’s deficient legal framework regarding public knowledge of beneficial ownership (there is no public registry of beneficial ownership) —, and reimbursing the public for siphoned funds.¹⁵⁵

The CSWG’s secretariat is hosted by Open Secrets, a NGO that exposes and builds accountability for private sector economic crimes that have impacted human rights, through investigative research, advocacy, and the law. Notably, the organization has conducted significant research into the “enablers of State capture,” or the corporations, economic service providers, and other private interests that “supply” State capture. The report “The Enablers: The Bankers, Accountants and Lawyers that Cashed in on State Capture,” co-authored by Open Secrets and Shadow World Investigations, is a prime example of this work as it explores the key role played by “enablers.”¹⁵⁶

¹⁵³ “An Agenda for Action”, The Civil Society Working Group on State Capture, February 2020, www.opensecrets.org.za/what_we_do/advocacy/civil-society-working-group-on-state-capture.

¹⁵⁴ It defined its purpose as follows: “The human cost of state capture and its contribution to deepening poverty and inequality provides the necessary urgency for the reforms set out in this submission. This is our agenda for action.”

¹⁵⁵ *Ibid.*

¹⁵⁶ “The Enablers: The Bankers, Accountants and Lawyers that Cashed in on State Capture,” Open Secrets, February 2020, www.opensecrets.org.za/what_we_do/investigations/the-enablers.

3.2.2 Global North anchor organizations that work in the Global South

CSOs in the Global North, as mentioned, participate in ground-truthing, amplify Global South voices, and publicly and strategically communicate cases to diverse audiences, including decision makers. While they tend to have greater access to resources and proximity to decision-making spaces, as well as other privileges, corporate accountability, environmental, human rights, and similar organizations in the Global North are often members of networks or collaborate with Global South organizations in convenings, dialogues, or campaigns. Some of them also have offices, staff, or partners around the world, including in risky or violent situations in the Global South, where they may also have an on-the-ground presence in national or subnational spaces, campaigns, community-based work, litigation, etc.

For purposes of this horizon scan and again based on leads, recommendations, and frequency and quality of mentions generated from our interviews and literature review, Empower has included three Global North groups that work in the Global South — ESCR-Net’s CAWG (U.S., global), Oxfam International (UK, global), and Transparency International (Germany, global) — as anchor organizations whose programming largely tackles the corporate capture of the State. Needless to say, there are several others worldwide that also address, challenge, or respond to corporate capture. However, this is often not the predominant part of their work. In these cases, we include numerous references to them throughout this chapter.

It is worth mentioning that some Global North groups, for example anchor organizations in adjacent fields, such as human rights or the environment, which may or may not already work on aspects of capture, could adapt their programming to explicitly address corporate capture to a greater degree or in other ways. Examples of such organizations include:

- Business and Human Rights Resource Center (BHRRC) (UK, global) (www.business-humanrights.org)
- Corporate Europe Observatory (Belgium) (<https://corporateeurope.org/en>)
- ECCHR (Germany) (www.ecchr.eu/en)
- Global Witness (UK) (www.globalwitness.org)
- Heinrich Böll Foundation (Germany, global) (www.boell.de/en)
- NRG1 (U.S., global) (<https://resourcegovernance.org>)
- SOMO (Netherlands) (www.somo.nl)
- The Sentry (U.S.) (<https://thesentry.org>)
- Transnational Institute (Netherlands) (www.tni.org/en)

International Network for Economic, Social and Cultural Rights (ESCR-Net)

ESCR-Net, founded in 2003, is a global network of more than 280 groups and individuals, primarily in the Global South, working to secure economic and social justice through human rights. Its mission is to advance the field of human rights in all its dimensions, with a particular emphasis on economic, social, and cultural rights, and to develop the tools for promoting, protecting, and fulfilling human rights. One of its core components is the Corporate Accountability Working Group (CAWG), which works frontally to stop corporate capture through its Corporate Capture Project, as well as transversally throughout ESCR-Net's different programmatic areas.

Ten years ago, ESCR-Net members met in Thailand and launched the Corporate Capture Project.¹⁵⁷ This initiative sought to learn from the Network's members about how corporate capture operates in their countries and territories and create programming to address this heretofore unidentified phenomenon, which, according to members, unanimously affects human rights globally. Through a multi-year survey and dialogue process, CAWG members refined their collective understanding of the corporate capture of the State, arriving at the following conclusions:

By using corporate influence to soften regulation, weaken regulatory powers, bank-roll elections, utilize state security services against communities, exercise revolving-door employment strategies and many other practices, the ever deepening corporate-government relationship is weakening the State institutions and processes that are responsible for ensuring they can respect, protect and fulfill human rights.

Conceptually, 'corporate capture' refers to the means by which an economic elite undermines the realization of human rights and the environment by exerting undue influence over domestic and international decision-makers and public institutions. In this sense, corporate capture acts as a 'root cause' of many corporate human rights abuses.

The Corporate Capture Project of the [CAWG] challenges corporate capture by researching, raising awareness, and supporting collective action to address this phenomenon. The project is led by a regionally and gender diverse Project Advisory Group (PAG) made up of ESCR-Net members. The PAG was formed after the 2014 ESCR-Net Peoples' Forum on Human Rights & Business where corporate capture was highlighted by members as a priority issue to address as a root cause of corporate-related human rights violations. An initial Scoping Report into a series of case studies of corporate capture was prepared for the Peoples' Forum.¹⁵⁸



¹⁵⁷ "Corporate Accountability Working Group (CAWG)", ESCR-Net, n.d., www.escr-net.org/corporateaccountability; and "Corporate Capture Project, CAWG", ESCR-Net, n.d., www.escr-net.org/corporateaccountability/corporatecapture.

¹⁵⁸ "Corporate Capture Project", CAWG, ESCR-Net, n.d., www.escr-net.org/corporateaccountability/corporatecapture.

The CAWG's main innovation — beyond being the first organization globally to articulate corporate capture as the root cause of corporate human rights abuse and, as a network, undertake programming to tackle it — has been to conduct research and analysis, package the problem in ways that make it understandable and actionable, and conduct promotion and awareness raising of the phenomenon through its member organizations, transversally through its programming, and notably on the international stage, primarily at the U.N. Global Forum on Business and Human Rights in Geneva and the Binding Treaty negotiations worldwide. Together, these steps combine to form a political education strategy that is fundamental in order to expand comprehension of the problem — before we can act collectively to address it (see further examples of CAWG's political education work throughout this chapter).

Oxfam International

Established in 1995, Oxfam International (Oxfam) is a global confederation of NGOs working together to reduce global poverty and inequality.¹⁵⁹ Incorporated in the UK and recently re-headquartered in Kenya, Oxfam consists of 21 member organizations working in 70 countries worldwide.

A core precept of Oxfam's work and vision is that the corporate capture of the State contributes to grand corruption, which plagues our economic systems and rules of law and exacerbates inequality and poverty. In particular, some Oxfam country affiliates, for example in Mexico and Latin America, have published extensively on this topic. The organization's main contributions regarding corporate capture have been research, campaigning, public policy advocacy, and innovations such as community-based human rights impact assessments, which allow for local cases to inform corporate due diligence and State responses to human rights violations, sometimes before they even occur.

What follows are two examples of Oxfam's relevant capture research and, most importantly, recommendations:

- “Captured Democracies: A Government for the Few”¹⁶⁰: Regarding the mechanisms used by elites to influence fiscal policy decisions in Latin America, Oxfam recommends:

¹⁵⁹ According to its vision statement, “International norms and multilateral frameworks are consistently undermined. A populist and anti-rights agenda is chipping away at the hard-won gains achieved by the worldwide movement for women's rights, and in the fight against poverty. The demand for accountable and inclusive governance that protects human rights and our planet has never been higher. A just and sustainable future depends on safe and vibrant spaces that allow all people to hold the powerful to account.” In addition to accountable governance, Oxfam also works to promote just economies centering people and planet, gender justice and the end to violence against women and girls, and stopping the climate crisis. See: “How we fight inequality to end poverty and injustice,” Oxfam International, n.d., www.oxfam.org/en/what-we-do/about/how-we-fight-inequality-end-poverty-injustice.

¹⁶⁰ Rosa Cañete Alonso, “Democracias Capturadas: El gobierno de unos pocos”, Oxfam/Clacso, 2018, www.oxfam.org/es/informes/democracias-capturadas-el-gobierno-de-unos-pocos. Pgs. 83-96.

- **Revolving door:** “Regulating the income, movement and entry of public officials through explicit laws and codes of conduct; Establishing ‘cooling-off’ periods before and after holding public posts if coming from or going to the private sector; Enacting strict codes of conduct in the exercise of public duties to minimise the risks posed by abstract conflicts of interest; Instating obligatory recusal in matters linked to former clients or employees; Strengthening the bodies that control and assess these types of cases, both governmental and non-governmental.”
 - **Regulate lobbying and prevent excessive lobbying capacity by elites:** “Promote laws to regulate and ensure transparency of lobbying in order to restrict the influence of elites in public policy design and legislation; Keep a register of lobbyists that also includes their allocated budgets for lobbying; Guarantee formal spaces in public institutions in which all people and organizations can present their proposals and interests in fiscal debates.”
 - **Strengthen constitutional courts:** “Implement suitable and impartial mechanisms for the selection of judges that ensure a diverse and unbiased composition, without influence from elites of any type; Ensure that judicial decisions or legal opinions issued by Constitutional Courts on fiscal or tax matters take into account the international obligations enshrined in human rights treaties; Establish mechanisms for scrutiny and accountability of judges’ performance, aimed at preventing or penalizing the use of the judiciary to favour the interests of elites to the detriment of the rights and interests of the State or of society.”
 - **Bribes and influence peddling:** “Impose penalties and make an example of those who pay or receive bribes or partake in influence peddling in public administration; Ensure the independence of the judicial system.”
 - **Tackle tax haven opacity and combat tax avoidance:** “Eliminate banking secrecy; Implement laws on fiscal transparency; Eliminate tax havens that conceal illegal practices and enable tax avoidance.”
- “Extractives Industries and Political Capture Effects on Institutions, Equality, and the Environment”¹⁶¹: “The corporate capture of the state is directly related to the concentration of economic power. It is with these highly concentrated material resources that the economic elite can muscle into a porous and discretionary state

¹⁶¹ Francisco Durand, “Extractives Industries and Political Capture Effects on Institutions, Equality, and the Environment,” Oxfam America - Peru, June 2016, https://cng-cdn.oxfam.org/peru.oxfam.org/s3fs-public/file_attachments/EXTRACTIVE%20INDUSTRIES%20AND%20POLITICAL%20CAPTURE.pdf. Pgs. 76-9.

apparatus, and take advantage of the weaknesses in civil society. These elites were fortified by the free market policies applied without interruption since the 1990s, and today they continue to be favored by state policies that prioritize the promotion of private investments. In Peru under Humala, we have seen that the main agents of capture are large domestic and foreign corporations (in particular extractive industries) whose material powers have continued to grow. They are able to use these powers to wield excessive influence. ... In all, the phenomenon of state political capture has favored and strengthened the economic elite, harmed vulnerable social groups, weakened the neutrality and regulatory capacity of the state, eroded state legitimacy, concentrated and fortified political powers, blocked congress from playing a proactive legislative role, limited democratic deliberation, and reduced access to material resources and opportunities for poor people. We conclude by noting that a society can avoid these dangers by reducing concentration of wealth, improving balance of power, providing alternative access to the media, and promoting greater organizational vitality and civil society capacity.”

Oxfam’s community-driven human rights impact assessment tool, an innovation called the Community-Based Human Rights Assessment Initiative (COBHRA), serves both to assess human rights impacts and encourage companies to conduct due diligence that considers human rights risks, impacts, and the consent of affected communities. COBRHA has been adapted by organizations throughout the world, including PODER in Mexico, where it was used preemptively as the primary research and public communication tool to prevent the negative impacts of an open-pit mine, a project which PODER and the community succeeded in canceling.¹⁶²

Regarding corporate capture, the COBHRA is most useful as a neutral communication tool that, based on corporate research into a project’s projected impacts that includes power mapping and anti-corruption analyses of revolving door, bribery, and similar problems, can alert the community, public, company, its investors, and regulators about capture and prevent it from causing further harm. COBHRA inserts community-led due diligence precisely into corporate, investor, and regulatory due diligence processes, all of which become materiality issues for companies if wrongdoing is found e.g. corporate capture of the State.

Transparency International (TI)

Founded in 1993 in Germany, Transparency International was arguably the first explicitly anti-corruption NGO in the world. At that time, corruption was considered taboo. Most businesses classified bribes as “business expenses” on their tax returns and international agencies accepted that corruption would cost billions of dollars in development

¹⁶² “Mining in Ixtacamaxtitlán,” PODER, n.d., <https://poderlatam.org/en/project/ixtaca>.

funding worldwide. Since then, TI has endeavored to measure and expose corruption, work with civil society, companies, and regulators to end it, and ultimately price corruption into the cost of doing business so as to enforce measures against it and use business arguments to stop it. Today, TI has dozens of national chapters worldwide.

Among its many innovations have been the Corruption Perceptions Index, ranking countries on the perception of corruption in the public sector; advocating for OECD countries to adopt, join, and enforce the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; the development of the Wolfsberg Anti-Money Laundering Principles (better known as “Know Your Customer (KYC);” advocating for passage of the U.N. Convention against Corruption (UNCAC); and pioneering work on issues ranging from beneficial ownership registries to tracking corruption in climate finance.¹⁶³

Insofar as capture is concerned, one of TI’s most relevant innovations has been to include State capture “by narrow vested interests” as part of the Corruption Perceptions Index (CPI) Technical Methodology as one of 13 data sources that experts and business executives provide regarding corruption in the public sector. The importance of this lies in the public communication power of the CPI, which is regarded worldwide as among the best reliable indicators of country-level corruption.

TI does not use the term corporate capture; instead, it refers to “vested interests” or the participation of corporations and business interests in “grand corruption” when discussing State capture, its preferred term. However, the academic references and footnotes across most of its publications on State capture refer to others scholars’ use of the term corporate capture. It would appear that TI sticks closely to Hellman, Jones, and Kaufmann’s original typology of State capture from 2000.¹⁶⁴

Three of TI’s most relevant studies on capture are “State Capture: An Overview” (2014), “State Capture in Asia Pacific” (2019), and “Grand Corruption and Climate Change Policies: Overview of Grand Corruption Evidence in Energy Transition, Biodiversity Loss and Climate Finance” (2022) (see [Climate Change and Energy Transition](#) sections of this report), as follows:

- “State Capture: An Overview”¹⁶⁵ : Tackling State capture necessitates reforms and improvements across institutions and in the internal structure of the political system, as well as a complete re-think of the relationship between the State and business. The strategies to address it should include:

¹⁶³ “Our Story,” Transparency International, n.d., www.transparency.org/en/our-story.

¹⁶⁴ Nieves Zúñiga, “State capture in Asia Pacific,” Transparency International, 22 July 2019, <https://knowledgehub.transparency.org/assets/uploads/kproducts/State-capture-in-Asia-Pacific-2019.pdf>.

¹⁶⁵ Maíra Martini, “State Capture: An Overview,” Transparency International, 3 December 2014, <https://knowledgehub.transparency.org/helpdesk/state-capture-an-overview>.

- **Enhancing the accountability of political leaders:** This includes Transparency in political financing; Conflict of interest rules; and Lobbying regulations.
- **Ensuring a competitive private sector:** This includes Economic policy liberalization; Enhancing greater competition; Regulatory reform; and Corporate governance.
- “State Capture in Asia Pacific”¹⁶⁶: “Given the complexity of the phenomenon of state capture, there are no simple solutions to prevent it. Rather, reducing the risks of state capture requires addressing the problem from different angles: the motivation for the capture, how it happens and the characteristics of the governance environment that might increase the opportunities for the capture to occur. Hellman (no date) states that reforms to deal with the problem of state capture need to target the buyers of influence (mostly firms), the sellers of influence (public officials) and the structure of the market in which they interact (the policymaking process). Some anti-capture measures are:”
 - Increase competition in the market
 - Open the policymaking process to wider consultation in the formulation, review and decisions on laws and regulations
 - Increase the mandate of judicial control over capture
 - Create consumer empowerment programmes
 - Create legitimate forms of influence
 - Address the interaction between State capture and administrative corruption
 - Strengthen meritocratic and independent and accountable institutions

¹⁶⁶ Nieves Zúñiga, "State capture in Asia Pacific," Transparency International, 22 July 2019, <https://knowledgehub.transparency.org/assets/uploads/kproducts/State-capture-in-Asia-Pacific-2019.pdf>.

3.3 Information tools

The broad field of data transparency and analytics, measurement indices and metrics, the use of technology, and data visualization and infographics is a core strategy of CSOs that seek to aggregate, understand, and disseminate information about capture so as to expose the phenomenon and involve government and business actors to end it. Beyond the important work of anchor organizations in the Global South and North that lead the way vis-a-vis their anti-capture strategies, the information tools and innovations mentioned here are an area that Empower considers among the most promising for how we can improve our understanding of the corporate capture of the State.

Virtually all of the tools discussed in this section are free of charge, use free software, employ open data protocols, and do not seek proprietary ownership of the data or technology involved. The tenets of shared intellectual property, an open Internet, and maximum accessibility are prerequisites of fulfilling the public's right to know, in this case regarding the purveyors and perpetrators of State capture. Other data tools exist in the market, such as the Bloomberg Terminal supply chain function, Standard & Poor's Capital IQ relational mapping tool, or DiverselO; however, the costs of these expensive tools are prohibitive to most and their data contracts prevent sharing with the non-paying public.

3.3.1 Anti-corruption and governance indices

TI's Corruption Perceptions Index ([see above](#))

NRGI's Resource Governance Index (RGI)¹⁶⁷

The RGI — a one-of-a-kind tool — measures the quality of governance in the oil, gas, and mining sectors. The most recent version, from 2021, assessed resource governance in 18 countries, half of which include both their mining and oil and gas sectors. While the RGI does not specifically include measures of State capture, it does include proxy data such as Enabling Environment issues (Voice and accountability; Government effectiveness; Regulatory quality; Rule of law; Control of corruption; Political stability and absence of violence; and Open data), as well as information about taxation and SOEs. The potential of this tool, of course, would be if it included measures of State capture and expanded its purview to include corporate capture.

Global Composite Index of State Capture

In May 2023, a small group of anti-corruption scholars and data practitioners — with funding from the Oversight and Anti-Corruption Authority of the Kingdom of Saudi Arabia — met to plan a new index that would more effectively measure State capture.¹⁶⁸

¹⁶⁷ "Resource Governance Index," NRGI, n.d., <https://resourcegovernanceindex.org>.

Critical to this effort is a forthcoming project by Daniel Kaufmann to develop a global composite index of State capture, as follows:

“This index draws on well-established data sources, including Varieties of Democracy (V-Dem), the Worldwide Governance Indicators, and the World Inequality Dataset. The composite index (SCI) is expected to comprise three distinct components:

- Capture and Corrupt Rule of Law: the prevalence of high-level corruption and state capture in the Judiciary, Legislature and Media.
- Capture of the Polity and Policy: extent of undue influencing and state capture of politicians and of policymaking.
- Capture-Enabling Environment: extent of weaknesses in the legal, regulatory and anti-corruption regimes, as well as marked inequality of wealth and income as proxies for unequal influence – all as enabling factors of state capture.

Each one of these three main components is in turn informed by many specific disaggregated variables from the sources listed above. The measurement encompasses data from over 170 countries since the late 1990s. Following standardization of the variables from different sources into common units, the composite score is derived by averaging the three components. They are in turn an aggregation of the individual variables, via percentile ranking, with values ranging from 0 to 100. It was underscored that this index, as in every governance and corruption measurement initiative, serves as a proxy, and hence is subject to margins of error.

Initial findings based on the index reveal that when we focus on state capture measurement important differences arise compared to traditional measures of corruption. Thus, the latter are likely to be a misleading proxy of the former for many countries. The initial state capture measures suggest that high-income countries exhibit higher relative values than traditional corruption estimates, while the reverse is the case for low-income countries. The differences in measuring both phenomena are consistent with the differences in conceptualizing both notions and suggest that differential policy responses are warranted.”¹⁶⁹

¹⁶⁸ “Advancing state capture measurement, the third GPMC Expert ‘Think-in’”, IACA, 16 May 2023, www.iaca.int/measuring-corruption/advancing-state-capture-measurement-the-third-gpmc-expert-think-in/.

¹⁶⁹ Elizabeth David-Barrett, Daniel Kaufmann, and Juan Camilo Ceballos, “Measuring State Capture,” Global Programme for Measuring Corruption, International Anti-Corruption Academy, October 2023, www.iaca.int/measuring-corruption/wp-content/uploads/2023/10/GPMC_Measuring_state_capture_19102023_online.pdf.

3.3.2 Databases, relational mapping, and visualizations

Academia

A few handfuls of scholars have contributed academically to the understanding of State capture and a subset of them have addressed corporate capture from one angle or another. A good bibliography of these contributions can be found in “The Mexican Council of Businessmen: Business Politics, Elites, and Decision--Making in Mexico.”¹⁷⁰ Within this subset, an even smaller portion employs social network analysis and relational mapping (e.g. power mapping) to visualize the data. Key contributions in this area include Julián Cárdenas (Universidad de Valencia), Armando Razo (Indiana University),¹⁷¹ Alejandra Salas-Porras (Universidad Nacional Autónoma de México),¹⁷² and Benjamin Cokelet (PODER and Empower, formerly New York University).

Of these contributions, the work of Cárdenas is indicative of the power of mapping and visualization within the context of corporate capture, as follows:

- **“Manual de Curso: Elites y desarrollo”**,¹⁷³
 - Regarding the corporate capture of the State, “[It] may be for Latin American business elites a lifeline to maintain their positions of power, market privileges, economic growth, and political, social, and ideological influence. Therefore, the mechanisms of the corporate capture of the State, such as revolving doors and financing of electoral campaigns, take on a determining role, especially during electoral periods. All over the world, companies (and other agents) seek to influence the rules of the game determined by the State for their growth, development, and well-being. The difference between Latin America and other regions, is that, in Latin America, the high concomitance between business and political elites has not led to high economic and social development and, therefore, we must ask ourselves why some countries grow and others do not.”

¹⁷⁰ Benjamin Cokelet, “The Mexican Council of Businessmen: Business Politics, Elites, and Decision-Making in Mexico,” Master’s Thesis, New York University, August 2013, <https://poderlatam.org/wp-content/uploads/2014/12/CMHN-Business-Politics-Elites-and-Decision-%C2%ADMaking-in-Mexico-English-May-2014.pdf>.

¹⁷¹ “Armando Razo,” Department of Political Science, Indiana University, n.d., <https://polisci.indiana.edu/about/faculty/razo-armando.html>.

¹⁷² Alejandra Salas-Porras, *La economía política neoliberal en México. ¿Quién la diseñó y cómo lo hizo?*, Ediciones Akal, 2017, www.akal.mx/libro/la-economia-politica-neoliberal-en-mexico_46863.

¹⁷³ Julián Cárdenas, “Manual de Curso: Elites y desarrollo,” *trAndeS Material Docente*, No. 11, Berlín, 2018, <https://networksprovidehappiness.com/wp-content/uploads/2018/06/Ca%CC%81rdenas-Julian.-2018.-Elites-y-desarrollo.-TRANDES.pdf>. Pgs. 26-8.

- **El Poder Económico Mundial:**¹⁷⁴

- “The objective of this research is to find out how large companies and their elites organize themselves through the study of corporate networks of “interlocking directorates” (relationships between companies when a manager or director simultaneously belongs to several boards of directors). After carrying out a comparative analysis of corporate networks among a large number of countries, this work explains the differences and similarities based on the institutional environment of corporations. It then presents and exposes the various ways of organizing the economy, known as varieties of capitalism. Finally, it explores corporate networks at the international level to demonstrate the existence of transnational economic power. By studying the networks of global economic power and understanding how large companies and their elites are organized and related, we better understand how the world works: international relations, state interventions in the economy, privatizations of public companies, the banking system, the crisis, the construction of Europe, globalization, and the future that awaits us.”

- **Select examples of social network visualizations:**

- “Network Organization of Corporate Power: A typology of corporate networks”¹⁷⁵
- “Corporate Networks and Business Influence in Panama, Costa Rica, and El Salvador”¹⁷⁶

Quién es Quién Wiki (QQW)

As mentioned earlier, PODER founded (in 2013) and hosts QQW, the largest open data source on businesspeople (including beneficial ownership), companies, and procurement data in Latin America, which contains nearly 8 million individual entries. This project has been adapted throughout the region, mainly as the data technology backbone of journalism projects focusing on corporate capture. QQW began with foundational academic research, conducted between 2009-13, which identified corporate interlock, but also the revolving door and *quid pro quo* bargains between Mexico’s business elite and the country’s president (dating back to 1959),¹⁷⁷ as the mechanism by which the Mexican Business Council captured and continues to capture the State.

¹⁷⁴ Julián Cárdenas, *El Poder Económico Mundial*, Centro de Investigaciones Sociológicas (Madrid, 2014), <https://latam.casadellibro.com/libro-el-poder-economico-mundial/9788474766394/2335865>.

¹⁷⁵ Julián Cárdenas, “Network Organization of Corporate Power: A typology of corporate networks,” *Revista Internacional de Sociología* (RIS), Vol. 70, N° 1, Enero-Abril 2012, Pgs. 77-105, https://bibliotecadigital.udea.edu.co/dspace/bitstream/10495/5140/1/C%C3%A1rdenasJuli%C3%A1n_2012_Organizaci%C3%B3nRedPoder.pdf.

¹⁷⁶ Julián Cárdenas and Francisco Robles-Rivera, “Corporate Networks and Business Influence in Panama, Costa Rica, and El Salvador,” *Colombia Internacional*, Vol. 107, 2021, Pgs. 87-112, <https://journals.openedition.org/colombiaint/855#quotation>.

¹⁷⁷ “Historia,” QuiénEsQuién.Wiki, n.d., www.quienesquien.wiki/es/inicio.

According to its website, “QuiénEsQuién.Wiki is a platform that provides data from various sources and allows for the mapping of economic and political elites in Latin America, thus exposing the phenomenon of State capture. The purpose of building a Latin American database is to facilitate the detection of capture patterns, such as opacity, corruption, and impunity. [QQW] is promoted by PODER, built entirely using open-source software, and always based on open data principles. The information is open to [CSOs], media, academics, researchers, and other actors seeking to highlight State capture and other associated phenomena. (...) [We] build tools and instruments around the QuiénEsQuién.Wiki database to better explain power relations and how to fight against them.”¹⁷⁸

Select examples of QQW’s data mapping and visualization projects include:

- TorreDeControl: “EL NAICM: Un mal negocio para México”¹⁷⁹
- “Salud, Dinero y Corrupción”¹⁸⁰

State Capture Estimation and Monitoring of Anticorruption Policies at the Sectoral Level (SceMaps)

Founded in 2019, SceMaps is an academic-civil society partnership between the Center for the Study of Democracy (Bulgaria), Fundación Ciudadana CIVIO (Spain), Asociata Forum (Romania), and the Università Degli Studi di Trento (Italy). Its objective is to “contribute to the fight against corruption in the [European Union] by delivering impact on multiple levels and providing for long-term sustainability. SceMaps is developing and implementing a novel “integrated risk assessment tool for estimating state capture and monitoring of anti-corruption policies” in high-risk economic sectors through a combination of qualitative and quantitative research methods, big data analysis and media content alert system. Designed for easy replication and take-up by EU member states’ public administrations, SceMaps will allow EU authorities to build evolving, risk-responsive instruments to assess and tackle corruption and capture risks in regulatory heavy areas and industries.”¹⁸¹

SceMaps plans to develop and implement its integrated risk assessment tool using:

- Application of State Capture Assessment Diagnostics methodology at sectoral level;

¹⁷⁸ *Ibid.*

¹⁷⁹ “Torre de Control,” QuiénEsQuién.Wiki, PODER, 2018, <https://torredecontrol.poderlatam.org>.

¹⁸⁰ “Salud, Dinero y Corrupción,” QuiénEsQuién.Wiki, PODER, 11 May 2021, <https://saluddineroycorrupcion.quienesquien.wiki/es/salud>.

¹⁸¹ “Objectives,” SceMaps, n.d., <https://scemaps.eu/objectives>.

- Evaluation of the enforceability and impact of anti-corruption measures and policies on the level of individual public institutions, relevant to the identified high-risk economic sectors through the application of MACPI tool (Monitoring Anticorruption Policy Implementation);
- Integration of public procurement and companies' financial information big data analytics with media content alert system;
- Development of a publicly accessible web-based platform with interactive analytics, which presents in an integrated way the results of the coherent risk assessment framework."¹⁸²

The SceMaps methodology consists of a three-dimensional approach for estimating and monitoring State capture at the sectoral level, as follows:

- "Expert assessments (surveys). Ideally, 60 experts per sector per country will be surveyed about the effectiveness of regulatory and control institutions at national and sectoral level (using the State Capture Assessment Diagnostics (SCAD) methodology). In addition, two institutional surveys per country will examine the effectiveness of institutional anti-corruption policy implementation (based on the MACPI Institutional methodology)."
- Public procurement and business data (big data approach). Companies and contracting entities will be crosschecked with tendering data, such as contract award frequency or number of contracts per government term, to analyse procurement concentration and to detect signs of collusions. The online platform will provide suspicious activity rankings of the individual public procurement buyers and suppliers. It will also include search options and filters by country; industry/sector; companies and institutions; contracts awards frequency; total and average value of contracts, etc. The macro data on the procurement concentration in a country and a sector will also be available for analysis (e.g. showing volume of the procurement market compared to the number of suppliers)."

¹⁸² "SceMaps pioneers a three-dimensional approach for estimation and monitoring of state capture on sectoral level combining: Expert assessments (surveys). Ideally, 60 experts per sector per country will be surveyed about the effectiveness of regulatory and control institutions at national and sectoral level (using the State Capture Assessment Diagnostics (SCAD) methodology). In addition, two institutional surveys per country will examine the effectiveness of institutional anti-corruption policy implementation (based on the MACPI Institutional methodology); Public procurement and business data (big data approach). Companies and contracting entities will be cross checked with tendering data, such as contract award frequency or number of contracts per government term, to analyse procurement concentration and to detect signs of collusion. The online platform will provide suspicious activity rankings of the individual public procurement buyers and suppliers. It will also include search options and filters by country; industry/sector; companies and institutions; contracts awards frequency; total and average value of contracts, etc. The macro data on the procurement concentration in a country and a sector will also be available for analysis (e.g. showing volume of the procurement market compared to the number of suppliers); Media articles. "Red flagging" articles and media investigations on suspected state capture and corruption cases will provide context and extra information about suspicious companies and contracting entities. The media monitoring will be based on media articles crawling by specialised software, using keywords, which point towards cases of public procurement violations, corruption and state capture by concrete companies." See: *Ibid*.

- “Media articles. ‘Red flagging’ articles and media investigations on suspected state capture and corruption cases will provide context and extra information about suspicious companies and contracting entities. The media monitoring will be based on media articles crawling by specialised software, using keywords, which point towards cases of public procurement violations, corruption and state capture by concrete companies.”¹⁸³

State Capture Assessment Diagnostics (SCAD)

SCAD is a project of the Center for the Study of Democracy (CSD), founded in 1989, which is a public policy institute fostering reform in Europe through public policy and impact vis-a-vis civil society. “SCAD is designed to measure state capture results/effects and the capture process itself, as the latter is most often hidden, secret, and inaccessible. It is a pioneering effort for the exposure of state capture through measurement. It is meant to aid European policy makers in tackling state capture issues in their drive to provide an instrument to safeguard rule of law principles and protect the Union’s financial interest, and to better inform enlargement progress-monitoring and decision-making.”¹⁸⁴

SCAD is useful to policymakers in two ways:

- “Verify the existence of state capture practices in given economic sectors and regulatory/enforcement institutions;
- Consider policy adjustments which close the opportunities for special interests to use the institutions of public governance for private ends.”

“[It] is designed to measure state capture results/effects and the capture process itself, as the latter is most often hidden, secret, and inaccessible. The SCAD model includes two major components:

- Business state capture pressure (BSCP), which is centered at the Monopolization pressure (MP) at national, sectoral or institutional level; and
- State capture enablers (SCE), which encompasses institutional and environmental factors at national level.”

¹⁸³ “Methodology,” SceMaps, n.d., <https://scemaps.eu/methodology>.

¹⁸⁴ “State Capture Assessment Diagnostics,” Center for the Study of Democracy, 26 June 2019, <https://csd.bg/publications/publication/state-capture-assessment-diagnostics/>.

“The SCAD policy design model and its components would allow EU authorities to build evolving, risk-sensitive instruments to assess and tackle corruption and state capture risks in regulatory heavy areas and industries. Regular monitoring of state capture indicators and policy implementation milestones provides an effective feedback mechanism for policy makers. Public access to monitoring data would guarantee both civic ownership over the anti-state capture policies and political commitment to the continuation of the process, even if it confronts powerful private interests.”¹⁸⁵

InfluenceMap

InfluenceMap, founded in 2015, is a London-based non-profit think tank that works globally to offer data and analysis about the impact of business and finance on climate change. It is best-known for its pioneering platform that analyzes corporate climate policy lobbying.

“Our mission is to facilitate ambitious action by corporations and governments globally to address the climate and biodiversity crises. We do this by generating innovative analysis for use by investors, corporations, policymakers, campaigns, and a range of other influential actors, as well as being a trusted and widely covered resource for the global media. Our two work streams, LobbyMap and FinanceMap, are world-renowned platforms that respectively hold the corporate and finance sectors accountable for climate performance.”¹⁸⁶

“[InfluenceMap] introduced the concept of the corporate Carbon Policy Footprint or Scope 4 emissions. The content has become a mainstream investor tool in assessing and engaging with companies, including the Climate Action 100+ process (...) It feeds into numerous NGO campaigns and helps the corporate sector engage more positively on climate policy.”¹⁸⁷

One investor group that uses InfluenceMap is Domini Impact Investments. According to Mary Beth Gallagher, “They do research on trade associations’ memberships and companies’ political positions related to climate. Domini uses this tool when it engages with a company. It is really helpful because it’s difficult information to dig into, learning about lobbying activities.”¹⁸⁸

According to one of its reports on South Africa, “To assess which corporations and industry associations are the most influential on climate issues, InfluenceMap’s method produces four key metrics: (...) The Performance Band (A+ to F) is a full measure of a company’s

¹⁸⁵ Alexander Stoyanov, Alexander Gerganov, and Todor Yalamov, “State Capture Assessment Diagnostics,” Center for the Study of Democracy, 2019, https://csd.bg/fileadmin/user_upload/publications_library/files/2019_06/SCAD_FINAL_WEB.pdf.

¹⁸⁶ “About”, InfluenceMap, n.d., <https://influencemap.org/index.html>.

¹⁸⁷ “Our Mission and Impact”, InfluenceMap, n.d., <https://influencemap.org/mission>.

¹⁸⁸ Mary Beth Gallagher, Head of Engagement, Domini, Interview on 31 August 2023.

climate policy engagement; The Organization Score (0-100) expresses how supportive or obstructive the organization is towards climate policy aligned with the Paris Agreement; The Engagement Intensity (0-100) is a measure of the level of policy engagement by the company whether positive or negative; and The Relationship Score (0-100) expresses how supportive or obstructive the company's industry associations are towards climate policy aligned with the Paris Agreement."¹⁸⁹

See the climate crisis and energy transitions sections of this report for specific references to its work.

3.4 Strategic corporate research

Throughout our interviews and literature review, Empower repeatedly documented the need for better research, more case studies, exposure of egregious cases of corporate capture, and both more targeted but also massive dissemination of research results. The sense we got is that within society there is a latent hunger to learn more about the corporate capture of the State, which is a phenomenon we generally perceive and sense, but about which we still know very little. In the aforementioned section we discussed the importance of data analysis and visualization, including power mapping and social network analysis, and technology as the initial combination needed to jumpstart our collective knowledge bases about corporate capture. However, the case studies, ground-truthing, story telling, and longer exposes of corporate capture that are needed go beyond data into something deeper: strategic corporate research (we subsequently discuss investigative journalism).

The guiding questions for strategic corporate researchers are invariably: who benefits, how, and how to stop them? As researchers we seek to reverse engineer cases of corporate-sponsored human rights or environmental violations — including allegations of corruption, corporate capture practices, and illicit financial flows and illegality, among other dynamics — so as to answer these questions. Our primary methodologies include following the money, power mapping, hierarchical ownership analysis, and horizontal supply chain analysis. Our objective is for rightsholders, their representatives, and other stakeholders to identify vulnerabilities in a company's or project's operations or networks that we can use as leverage to defend people and planet. What follows are innovations and strategies for concrete interventions with real potential for adaptability and scalability in other sectors and geographies across the world.

¹⁸⁹ "Climate Policy Engagement in South Africa. Analysis of South African industry's advocacy on climate-related policy and the energy transition," InfluenceMap, February 2023, <https://influencemap.org/report/Climate-Policy-Engagement-in-South-Africa-20575>.

Empower

Here at Empower, we are a Mexico-based, worker-owned, worker-governed social enterprise that specializes in strategic research, business intelligence, due diligence, and civil society capacity building. Our mission is to improve corporate transparency and accountability by eliminating the strategic information gap between businesses and civil society stakeholders. Generally, we work on four thematic areas: technology and human rights; grave crimes and illicit financial flows; democratic economies; and private capital. We also work on business and human rights; labor rights issues, including forced labor; supply chain research, including regarding the climate crisis and the just transition; and investigative journalism.

Empower works exclusively for CSOs of different shapes and sizes, primarily to build their capacities to engage businesses in order to improve private sector compliance with human rights, environmental, and social responsibility standards. As an alternative to the corporate-led model of globalization, we seek to contribute to building a democratic economy by operating as a worker-owned and worker-governed organization. Our experience includes that of our former sister organization PODER, which is recognized globally as a pioneer in the corporate accountability and business and human rights fields.

Since 2013, we have produced hundreds of strategic research products and other deliverables for over 40 clients in 20 countries. We have worked in most major Latin American countries, the U.S., several places in Europe, Australia, and MENA, and we have contributed to or informed work in numerous other locations, from Serbia to South Africa and India. Our clients range from human rights and environmental organizations to trade unions, and from university social science departments to philanthropic foundations.

As research consultants and providers, our work invariably employs a corporate capture framework, follow-the-money methodology, power mapping and analysis, tech-based information tools, and a mix of open and human sources to produce actionable intelligence for advocates seeking to enhance understanding, press advocacy strategies, or directly engage corporate targets.

Select examples of Empower's work with a corporate capture focus include:

- “Who’s Behind ICE?”:¹⁹⁰ According to Mary Beth Gallagher, “[This research] that Empower produced for Mijente was excellent. We learned where the money was going and acted on it, connecting dots between public contracts and who is doing business with who.”¹⁹¹

¹⁹⁰ “Who’s Behind ICE?”, Empower, for Mijente, 23 October 2018, https://mijente.net/2018/10/whos-behind-ice-the-tech-companies-fueling-deportations/?S-BEHIND-ICE_-The-Tech-and-Data-Companies-Fueling-Deportations_v3-_pdf.

- “State Capture and Grave Crimes in Coahuila”¹⁹²
- Runaway Train: The Perilous and Pernicious Path of Private Capital Worldwide¹⁹³

The Sentry

Founded in 2016 by George Clooney and John Prendergast, The Sentry is a U.S.-based, non-profit research and policy organization that “seeks to disable multinational predatory networks that benefit from violent conflict, repression, and kleptocracy.” Importantly, it employs a corporate capture analysis, albeit regarding the “illicit actors [that] compete violently to capture state resources and divert funds for their own personal enrichment and to finance their armed campaigns.”¹⁹⁴

Its strategies and innovations include:

- “The Sentry aims to alter the warped incentive structures that continually undermine peace and good governance. Our investigations follow the money as it is laundered from war zones to financial centers around the world. We provide evidence and strategies for governments, banks, and law enforcement to hold the perpetrators and enablers of violence and corruption to account.”
- “(...) The Sentry produces hard-hitting investigative reports and dossiers on individuals and entities connected to grand corruption and violence. We advocate for the use of tools of financial and legal pressure, including anti-money laundering and illicit finance measures, targeted network sanctions, criminal prosecutions, compliance actions by banks and other private companies, and asset recovery. As a result of our work, money laundering routes have been exposed and shut down, assets have been frozen, travel has been banned, and corrupt networks have been cut off from the international financial system. Through strategic partnerships with governments, global banks, and other private and public organizations, The Sentry has succeeded in creating real consequences for many of the officials and commercial actors perpetuating and profiting from war, mass atrocities, and other human rights abuses.”
- “In order to track and analyze how armed conflict and atrocities are financed, sustained, and monetized, The Sentry uses open source data collection, field research, and state-of-the-art network data analysis technology, and works in partnership with local and international civil society organizations, journalists, and governments.”¹⁹⁵

¹⁹¹ Mary Beth Gallagher, Head of Engagement, Domini, Interview on 31 August 2023.

¹⁹² “Captura del Estado y Graves Crímenes en Coahuila,” Empower, 2019-22, <https://crimenesgraves.empowerllc.net>.

¹⁹³ Runaway Train: The Perilous and Pernicious Path of Private Capital Worldwide, Empower, 2021, <https://empowerllc.net/en/issues/private-capital>.

¹⁹⁴ “About,” The Sentry, <https://thesentry.org/about>.

¹⁹⁵ *Ibid.*

An example of one of its most relevant investigations is “The Backchannel. State Capture and Bribery in Congo’s Deal of the Century.” Thanks to a leak of banking records, evidence was revealed about two major players in China’s industrial sector gaining access to vast mineral deposits in the Congo. The leak reveals opaque arrangements surrounding a long-term project that concealed illegal and immoral practices. This report, like others, is based on interviews with individuals directly involved in the case, documentary analysis (including direct requests for information from involved financial entities), as well as “forensic financial analysis” (including financial flow analysis).¹⁹⁶

In “Architects of Terror: The Wagner Group’s Blueprint for State Capture in the Central African Republic,” The Sentry investigates a case in the Central African Republic where a multinational private military company, The Wagner Group, seizes control of a portion of the State’s military apparatus and mining activities. The company exports the extracted minerals to neighboring countries and other continents, effectively exerting influence over key sectors of the economy. Importantly, The Wagner Group maintains ties with the Russian government, leading to concerns of State-sponsored interference.¹⁹⁷ This case underscores the complex dynamics of corporate capture in the Global South, raising significant human rights concerns for the local population and evoking the aforementioned discussion on “developmental capture” (see [Chapter 2](#)).

The Centre for Research on Multinational Corporations (SOMO)

SOMO, founded in 1973, is a non-profit research organization based in the Netherlands that focuses on social, environmental, and economic issues associated with sustainable development. It researches multinational corporations and their impact on people and planet, and its expertise ranges from supply chains to corporate research, corporate accountability, and economic reform. The main sectors it covers are electronics, energy and water, minerals, food and agriculture, clothing, pharma, and finance. SOMO also coordinates four networks: MVO Platform, OECD Watch, GoodElectronics, Tax Justice Nederland.

In 2023, SOMO began a new project called “The Counter,” which is a free global helpdesk for environmental and social activists challenging corporate power, including issues of environmental damage, climate disruption, social injustice, and human rights violations. The Counter helps activists uncover and hold multinational corporations and their owners to account for their harmful and unfair business practices.¹⁹⁸

¹⁹⁶ “The Backchannel. State Capture and Bribery in Congo’s Deal of the Century,” The Sentry, November 2021, <https://thesentry.org/2021/11/28/6516/breaking-china-congo-deal-century-linked-fraud-bribery>.

¹⁹⁷ “Architects of terror. The Wagner Group’s Blueprint for State Capture in the Central African Republic,” The Sentry, June 2023, <https://thesentry.org/reports/architects-of-terror>.

¹⁹⁸ “The Counter,” SOMO, n.d., www.somo.nl/the-counter.

Select example of SOMO's research with a corporate capture focus:

- “Undermining Mongolia: Corporate hold over development trajectory”¹⁹⁹

Global Witness

Global Witness was founded in 1993 as a research and campaigning organization to expose “environmental and human rights abuses in the oil, gas, mining, and timber sectors, and [track] ill-gotten money and influence through the global financial and political system. Today, we continue to focus on abusive actors, misuse of power and financial flows, but have turned our focus on some of the most urgent issues facing humanity: the climate emergency and attacks on civic space.”²⁰⁰

The organization's investigations are well-documented, including through publication allies with independent media organizations such as *The Guardian*. “Global Witness investigations are known for their meticulous attention to detail and we use an ever-evolving variety of techniques including undercover filming and scraping and analysing open source and leaked data sets. For instance, in 2020 we conducted our most ambitious data-driven investigation to date, uncovering the illegal deforestation linked to Brazil's biggest beef companies. Our communications, events and partnerships bring issues to the attention of audiences around the world and onto the political agenda. Meanwhile, through our advocacy we successfully shape and secure laws, sanctions and changes in business practice to ensure transition to a just and sustainable future.”²⁰¹

While Global Witness does not refer to corporate or State capture, its work on issues from curbing illicit financial flows, to ending corporate complicity in environmental and human rights abuses, to ending corporate corruption does address the modes and effects of corporate capture.

Transnational Institute (TNI)

Founded in 1974, TNI is a non-profit global research and advocacy think tank based in the Netherlands. Its mission is to advocate for a just, democratic, and sustainable world. As mentioned in an earlier chapter, TNI has been an advocate for fair trade and corporate accountability and, prominently, has worked on ISDS and investor protection measures since the mid-2000s. While its activities and interests are quite expansive, it has produced several research and similar products on corporate capture over the years, namely:

¹⁹⁹ Rhodante Ahlers, Vincent Kiezebrink, and Sukhgerel Dugersuren, “Undermining Mongolia: Corporate hold over development trajectory,” Oyu Tolgoi Watch/SOMO, February 2020, www.somo.nl/how-the-imf-the-world-bank-the-us-and-rio-tinto-undermine-mongolia.

²⁰⁰ “About us,” Global Witness, n.d., www.globalwitness.org/en/about-us.

²⁰¹ *Ibid.*

- “‘Junk Agroecology’: The corporate capture of agroecology for a partial ecological transition without social justice”: In collaboration with Friends of the Earth International (FOEI).²⁰²
- “Committing geocide: climate change and corporate capture”²⁰³
- “Political capture by the financial industry”²⁰⁴

Inclusive Development International (IDI)

IDI, founded in 2012, is an international non-profit organization, based in North Carolina, that works to improve the lives of local communities and grassroots organizations by exposing human rights violations and corporate exploitation that these groups face vis-a-vis development projects, particularly those funded by international financial institutions. It primarily collaborates with individuals and organizations in Africa and Southeast Asia.

IDI’s main activities include research, legal casework, and policy advocacy. It collaborates with local communities and grassroots organizations impacted by unfair development practices and assists them in protecting their natural resources, land, and human rights from harmful investment projects. In terms of research, IDI follows the money and assists community and local groups to expose the investment and supply chains behind nefarious projects.

While IDI does not employ a corporate capture analysis *per se*, it does conduct strategic corporate research. Similar to SOMO’s The Counter, IDI launched Following the Money to Justice in 2016 to uncover and expose the companies who profit from human rights violations and environmental destruction. This is a free-of-charge service that prioritizes requests from the sub-Saharan Africa and Southeast Asia regions.

According to its website, “[Following the Money to Justice] provides information, practical tips and exercises detailing how to map an investment chain behind a project, identify the strongest pressure points along the chain, and then devise effective advocacy strategies that leverage those points. It explains what you need to know, the challenges you may face, and the strengths and weaknesses of a range of advocacy options. Examples are provided from cases around the world where communities have

²⁰² “‘Junk Agroecology’: The corporate capture of agroecology for a partial ecological transition without social justice,” TNI and FOEI, 13 October 2020, www.tni.org/en/publication/junk-agroecology.

²⁰³ Susan George, “Committing geocide: climate change and corporate capture,” TNI, 22 September 2016, www.tni.org/en/article/committing-geocide-climate-change-and-corporate-capture.

²⁰⁴ Manolis Kalaitkaze, “Political capture by the financial industry,” TNI, 19 January 2015, www.tni.org/es/node/14399.

tried to follow the money and have used a number of strategies to hold investors and governments to account.”²⁰⁵

3.5 Investigative journalism

The need for investigating and exposing the corporate capture of the State, and disseminating this information both strategically and massively, was mentioned multiple times by interviewees. However, it was virtually never mentioned in the documents examined for our literature review. The opportunities for support that were raised most often were:

- More funding for data and investigative journalism, and local journalism that examines subnational topics and jurisdictions. Some examples include Empower Journalism’s own work, such as “Corporate elites co-opt public health in Mexico”²⁰⁶ and “Vitol still has contracts with Pemex; its former CEO in Mexico is an associate of a deceased financial operator of Los Zetas,”²⁰⁷ as well as PODER Journalism’s work, including “EE.UU regaña a México por monopolio de Slim, AMLO lo premia con más contratos”²⁰⁸ and “El millonario y opaco negocio de la salud pública.”²⁰⁹
- Support existing investigative journalism networks, such as the International Consortium of Investigative Journalists (ICIJ),²¹⁰ which broke the Panama Papers stories; Red PALTA in Latin America,²¹¹ which broke the Covid-19 Pandemic medical supplies and vaccination scandals in the region; and the Organized Crime and Corruption Reporting Project (OCCRP),²¹² which contributed to breaking the Pandora Papers. According to Elizabeth David-Barrett and Slobodan Tomić, networks of transnational journalism enhance cooperation, mitigate the risks associated with taking on the powerful and well-connected, contribute to building the capacity of the profession (by providing new tools and training), and collate data from a variety of sources to facilitate access and triangulate evidence, as well as develop mutual trust among journalists. Moreover, transnational journalism plays a pivotal

²⁰⁵ “Following the Money to Justice,” IDI, n.d., www.followingthemoney.org.

²⁰⁶ Claudia Ocaranza and Omar Escamilla, “Corporate elites co-opt public health in Mexico,” *Empower Journalism*, 21 March 2023, <https://empowerllc.net/en/2023/03/21/slim-bailleres-fundsalud-eng>.

²⁰⁷ Claudia Ocaranza and Omar Escamilla, “Vitol still has contracts with Pemex; its former CEO in Mexico is an associate of a deceased financial operator of Los Zetas,” *Empower Journalism*, 23 June 2022, <https://empowerllc.net/en/2022/06/23/vitol-pemex-roca-ramisa-colorado-eng>.

²⁰⁸ Ricardo Balderas and Queletzu Aspra, “EE.UU regaña a México por monopolio de Slim, AMLO lo premia con más contratos,” *PODER Journalism*, 21 February 2022, <https://poderlatam.org/2022/02/ee-uu-regana-a-mexico-por-monopolio-de-slim-amlo-lo-premia-con-mas-contratos>.

²⁰⁹ Ricardo Balderas and Diana Silva, “El millonario y opaco negocio de la salud pública,” *PODER Journalism*, 19 September 2023, <https://poderlatam.org/2023/09/el-millonario-y-opaco-negocio-de-la-salud-publica>.

²¹⁰ See: www.icij.org.

²¹¹ See: <https://redpalta.org>.

²¹² See: www.occrp.org/en.

role in addressing corporate capture by highlighting important cases of corruption and exerting pressure on public officials to initiate prosecutions and sustain legal processes.²¹³

- Support documentary films and streaming projects, such as PODER-Detective’s collaboration in Mexico or Barbara Kopple’s documentaries about political pressure against climate activists, for example. Incidentally, one interviewee noted that his introduction to corporate capture was a short documentary from 2000 called “Making a Killing: Philip Morris, Kraft and Global Tobacco Addiction,” produced by Corporate Accountability International.²¹⁴

3.6 Political education and capacity building

So far, in this chapter, we have discussed the strategies of anchor organizations and innovations in the areas of data and information tools and strategic corporate research. These examples underpin the global corporate accountability movement and anti-corporate capture efforts. Using this data, research, and analysis, other organizations adapt and translate these inputs for different audiences, primarily in the form of capacity building and political education for rightsholders, advocates, CSOs, and other stakeholders so that they may understand corporate capture and wield the tools to stop it. Essentially, the strategy behind anti-capture political education is that corporations have captured the narrative and, therefore, it is incumbent upon us to reclaim and shape it.

A primary example of political education is from recent experiences in South Africa. During the investigations and deliberations of the Zondo Commission, CSOs — primarily articulated through the CSWG on State Capture — and journalists grabbed the reins of the public narrative to ensure that the Zuma administration (2009-18), subsequent presidential administrations, and political parties did not steer the process awry, as follows:

Civil society’s first response to state capture was characterised by mass communication. To overcome the lack of public – or, indeed, state – interest in the issue, it was necessary to build a framework of information on, and mass interest in, its scale and extent. (...) For example, the Ahmed Kathrada Foundation was among the first to raise (proverbial) red flags about the landing of a private aeroplane at the Waterkloof Air Force Base in violation of National Key Points (1980) legislation. More than any other, this was the event that fully brought the Gupta family to public attention, galvanising civil society. (...)

²¹³ Elizabeth David-Barrett and Slobodan Tomić, “News never sleeps: When and how transnational investigative journalism complements law enforcement in the fight against global corruption”, Serious Organised Crime and Anti-Corruption Evidence Research Programme, May 2022, <https://static1.squarespace.com/static/63e4aef3ae07ad445eed03b5/t/6481bc4abdc18e26af648b08/1686223969960/news-never-sleeps-bn14.pdf>. Pgs. 2-6.

²¹⁴ Bobby Ramakant, Policy Director, Citizen News Service (India), Interview on 8 September 2023.

Civil society's attempts to respond to state capture began piecemeal, with individual actions of limited scope. However, the work of investigative journalists, legal organisations and NGOs built public knowledge of these abuses over several years. This, in turn, created the conditions for further action through the development of a common language to understand the issue. **This was necessary for the eventual coordination of civil society to oppose state capture.** Nonetheless, as we have seen, while civil society coordination was possible at various points, South African civil society is not homogeneous, and, over time, the coalition broke down.

The counter-state capture efforts that did emerge were varied and initially uncoordinated because organisations undertook them with different ideological origins, strategic approaches and understandings of why (and how) the South African state was captured. As information about state capture was made public, South Africans' abilities to 'connect the dots', as Pravin Gordhan famously put it, produced a common set of immediate goals around which these groups could rally. This enabled them to overcome ideological differences and coordinate their efforts sufficiently to make a notable impact on the country's political landscape at a crucial moment. The coordination was able to advance the cause of one of the medium-term goals of many of these organisations – the removal from office of President Jacob Zuma. However, at the same time, the removal of Zuma exposed a weakness in the common understanding of the problem of state capture. Several activists argue that state capture was too narrowly centered on the Zuma presidency.

Some civil society organisations now play a watchdog role. But, in contrast, other organisations continue to demand justice, transparency and reform of the political system to help remedy the effects of state capture and eliminate the conditions that allowed it to happen.²¹⁵



²¹⁵ Luke Spiropoulos, "Civil Society in the Face of State Capture: Solidarity and Disharmony", in Mbongiseni Buthelezi and Peter Vale (Eds.), *State Capture in South Africa. How and why it happened*, Wits University Press, 2023, <https://pari.org.za/new-book-state-capture-in-south-africa-how-and-why-it-happened>. Pgs. 130-50.

At the global level, primarily through its extensive membership network, the ESCR-Net's CAWG is arguably the prime example of anti-corporate capture political education, which employs an innovative online comic books series called "The Power of the 99% to Stop Corporate Capture" to explain corporate capture in ways that make sense for diverse audiences.²¹⁶ Since 2020, and together with an external art studio, CAWG's Project Advisory Group on Corporate Capture meets regularly to plan out the content and strategic moments when new issues of the comic will be released. The first, about the corporate capture of the United Nations, was released in 2021 to coincide with the 46th session of the U.N. Human Rights Council (HRC).

The CAWG's comic books series is not only international, but also works at the national level. For example, in the second comic, released during the Covid-19 Pandemic, there are several cases about private hospitals in Kenya, the UK, and the U.S.²¹⁷

The objective is for concern about corporate capture to become a global conversation. According to CAWG coordinator Mona Sabella, CSOs are starting to have conversations about corporate funding of multi-stakeholderism, which could also become a comic one day. In her perspective, corporate capture is one of the most dangerous issues at this moment, but many people are not yet aware of it.²¹⁸

3.7 Conflict zones

In September 2023, the Government of Azerbaijan attacked the Armenian population living in the Nagorno-Karabakh region, leading to the ethnic cleansing and forced displacement of 100,000 people in just three weeks. Thirty years earlier, Azerbaijan and British Petroleum (BP) had signed a 30-year agreement to develop Caspian Sea oilfields, which, over time, expanded significantly to include almost every type of energy asset in Azerbaijan, including most recently a huge solar power plant in Jabrayil, part of the Nagorno-Karabakh region where the Armenian population has been displaced. Azerbaijan's goal seems clear: to transform the conflict zone into a green energy-producing region where — thanks to BP's capture of the Azerbaijani State — the country will boost energy production while BP reaps the profits. What does the corporate accountability movement have to say about this conflict? To date, very little.

Business and human rights in conflict zones is arguably one of the most pressing issues before our movement today. Given the graveness and urgency of these conflicts, oftentimes the plodding pace of global mechanisms, policymaking, and civil society strategies cannot keep up with the changes around us. In other words, conflicts offer the

²¹⁶ "ESCR-Net launches a comic series on corporate capture," CAWG, ESCR-Net, 16 February 2021, www.escr-net.org/news/2021/video-escr-net-launches-comic-series-corporate-capture.

²¹⁷ We have been told that in subsequent issues there will also be a number on corporate capture and the environment.

²¹⁸ Mona Sabella, Coordinator, Corporate Accountability, ESCR-Net, Interview on 6 September 2023.

perfect cocktail for corporations to capture the State and make a buck before anyone is the wiser. That said, at least two organizations — Heartland Initiative and The Sentry, with honorable mention for the BHRRC and the Investor Alliance for Human Rights — are equipped to act fast and tackle the thorny corporate accountability questions in conflict-affected and high-risk areas, as follows:

- **Heartland Initiative:**

- “Heartland Initiative, Inc. is a nonprofit practice-based research organization that promotes the fundamental rights and freedoms of people in conflict-affected and high-risk areas. Heartland’s work responds to a growing need at the intersection of business and human rights, where public and private stakeholders understand that business activities can contribute to either the escalation or mitigation of conflicts and their attendant human rights violations. Through tailored learning services, Heartland works with stakeholders to develop solutions that simultaneously prevent and mitigate human rights harms while managing the heightened legal, reputational, and financial risks faced by companies and investors in conflict-affected and high-risk areas.”²¹⁹
- “Heeding the UNGPs’ call for enhanced HRDD in conflict-affected areas, Heartland Initiative has developed the Rights Respecting Investment in CAHRA methodology. Designed to assist investors in protecting the rights of vulnerable populations while simultaneously addressing the material risks faced by companies, Heartland’s methodology enables them to identify and assess the severity of a company’s risks based on its geographical, relational, and/or operational proximity to the violation, violator, and victim. This approach avoids focusing on a single issue, geography, or controversy in favor of a process that considers the interrelated risk variables of a company’s operational contexts, value chain partners, and business activities. What results is a more comprehensive human rights and material risk profile of the engaged company, encompassing a higher percentage of its global revenue and operations and a wider spectrum of at-risk rights-holders and countries. Applying this strategy in investor-led engagements incentivizes increased participation by companies who recognize a broader array of their material risks, by civil society organizations concerned about the rights of vulnerable populations, and by like-minded investors focused on risks to both people and their portfolios.”²²⁰

²¹⁹ “About Us,” Heartland Initiative, n.d., www.heartland-initiative.org/about-us.

²²⁰ Sam Jones and Richard Stazinski, “Advancing business respect for human rights in conflict-affected areas through the UNGPs,” Heartland Initiative, 9 June 2021, www.business-humanrights.org/en/blog/advancing-business-respect-for-human-rights-in-conflict-affected-areas-through-the-ungps.

- **The Sentry:** For a more complete discussion of The Sentry, see the earlier mention of its strategic corporate research work. Regarding its innovation for corporate accountability in conflict zones, “The Sentry examines the techniques used to benefit financially from armed conflict and atrocities, including:
 - Convergence of licit and illicit systems - illicit actors conceal their operations and launder their profits through globalized systems of finance, trade, and transportation.
 - Regulatory and sanctions evasion - illicit actors find ways to adapt to and avoid international laws, sanctions, and regulations.
 - Disguised beneficial ownership - illicit actors employ increasingly sophisticated methods to disguise their true identities to avoid detection and exposure.
 - Money and commodities laundering - illicit actors launder money and commodities such as gold to disguise their criminal origins and move it through legitimate financial systems undetected.
 - Extractive industries and natural resource trafficking - illicit actors extract, tax, and sell natural resources to fund and sustain their operations.
 - Corruption and illicit financial flows - illicit actors compete violently to capture state resources and divert funds for their own personal enrichment and to finance their armed campaigns.
 - Security sector fraud and abuse - illicit actors manage state and military expenditures to fund off-budget activities with little-to-no transparency or accountability.
 - Elite financing and offshored assets - illicit actors abuse their power and position to accumulate significant wealth that is then laundered through offshore jurisdictions to evade detection.
 - War crimes and crimes against humanity - illicit actors orchestrate crimes against civilian populations in natural resource-rich territories — including enslavement, forced labor, and arbitrary arrests — as a key strategy for taking control over wealth and silencing dissent.”²²¹

²²¹ "About", The Sentry, <https://thesentry.org/about>.

Another critical area has been in Colombia, where the Government of President Gustavo Petro (2022-26) has begun to change the narrative of the country's conflict. He has shifted the narrative, placing the rule of law — including anti-corruption measures — above commercial and economic interests. The Government has also strengthened participation spaces, including to combat State capture. The Total Peace Law (2022), for example, is an attempt to negotiate and dialogue, subjecting armed groups to justice, which have been key actors as both subjects and objects of corporate capture in Colombia.²²²

Regarding companies and armed actors, these are gray areas where legality mixes with illegality, and companies employ both private security contractors and the use of paramilitaries. On the legal side, the approval of State energy battalions to provide private security is not yet well-studied. For example, the mining company Cerrejón has a battalion that guards the railroad infrastructure and mining operation, which has led to cases of extrajudicial executions, blocking water sources for the community, etc. On the illegal side, the case of the mining company Drummond demonstrated that paramilitaries committed massacres and forced displacement in order for the company to obtain more land.²²³

In 2016, the Final Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace was a historic opportunity to introduce regulatory changes in the national economy to reduce the weight of extractivism and strengthen other productive sectors. This can be achieved by promoting an energy transition that avoids the imposition of disproportionate socio-environmental burdens, as well as a democratic transition that guarantees free expression, unconditional and unrestricted safeguarding of life, recognition of worldviews and traditional knowledge, and the creation and strengthening of State and community justice forums. This can be summarized as a “post-extractive transition.”²²⁴

3.8 Progressive industrial policy

Beyond civil society-led strategies, tools, and innovations for how, as a corporate accountability movement, we can address and stop the corporate capture of the State, there are political, political economy, and regulatory opportunities to curb corporate capture through policy making. One of the most intriguing avenues for change is offered by progressive industrial policy.

²²² Luisa Rodríguez Gaitán, Coordinator, Democracy and Human Rights Program, Heinrich Böll Foundation (Colombia), Interview on 11 September 2023.

²²³ Luisa Rodríguez Gaitán, Coordinator, Democracy and Human Rights Program, Heinrich Böll Foundation (Colombia), Interview on 11 September 2023.

²²⁴ Fernando Vargas Valencia *et al*, *Extractivismo y captura corporativa del Estado en Colombia: aportes contra la impunidad*, Fundación Heinrich Böll (Colombia), 2023, <https://co.boell.org/es/2023/05/04/extractivismo-y-captura-corporativa-del-estado-en-colombia-aportes-contra-la-impunidad>. Pgs. 26-8.

As defined by Ira Kalish and Michael Wolf from the company Deloitte, “Industrial policy is generally [understood as] any government intervention that provides support for a particular sector or industry. Interventions such as tariffs, trade restrictions, and subsidies can help shield a domestic industry from import competition. Governments can provide tax credits or direct funding to encourage investment, while government procurement can be used to boost demand in the sector. Although industrial policy can be used for any sector, historically such policies have mostly focused on heavy industry, technology, energy, agriculture, and anything that could have military applications. (...) [For example,] The largest piece of climate change-related industrial policy is the US Inflation Reduction Act. Under this new legislation, emissions are expected to fall by as much as 20 percentage points, though most estimates put it between 10 and 15 percentage points lower. If these estimates are correct, they would represent significant progress toward the United States’ climate goals. The major drawback of the US policy is that it is all carrots. The lack of sticks in the policy could lead to more government waste than necessary. For example, companies will continue to qualify for the associated tax credits regardless of their ability to reduce emissions.”²²⁵

In the United States and Western Europe, one of the most influential figures shaping industrial policy is Dani Rodrik, the Ford Foundation Professor of International Political Economy at the John F. Kennedy School of Government at Harvard University, whose critical ideas about globalization and his support of green and inclusive domestic policies have garnered attention within the Biden Administration (2021-24). According to Rohan Sandhu, co-founder and associate director of the Reimagining the Economy Project at the Harvard Kennedy School, “[The ‘bottom up’ approach or administrative apparatus undergirding the implementation of Bidenomics] is in line with my colleague Dani Rodrik’s recent paper, with Nathan Lane and Reka Juhasz, reviewing evidence around the structures that make industrial policies successful. From a governance perspective, they highlight two attributes that are necessary: the first is an ‘embedded

²²⁵ Deloitte also provides the following recommendations regarding industrial policy:

- “Many of these new policies offer incentives for companies to meet their climate goals. Given the wide range and scope of these incentives, companies should revisit their climate and emissions-reduction initiatives. With government support, companies may be able to accelerate their climate goals or reallocate capital for emissions reduction to different uses.

- The use of industrial policy is creating competing industrial policies in other jurisdictions. Global government agencies appear to be more open to working with businesses, as they design policies aimed at securing supply chains, reducing emissions, and advancing technological capabilities. Engagement in dialogue with policymakers can help ensure that business needs are met while advancing government priorities.

- Industrial policy signals a paradigm shift in investment and economic priorities. With this shift comes a rise in demand for new skills. In an environment where labor is already relatively scarce, this could put further strain on the ability to attract and retain a workforce with the desired skills. As the skill landscape changes, businesses may need to reevaluate their human capital policies. Even businesses operating in industries that appear more distant from industrial policy may be at risk should their workers have comparable skills or education profiles as the workers will be increasingly in demand as these new investments take off.

- Industrial policy will likely accelerate changes in supply chains. ‘Friend shoring’ will gain importance as some of these policies place restrictions on the location of inputs, exports, and capacity expansion. Industrial policy benefits and associated restrictions should be added to the numerous considerations, such as ease of doing business, energy costs, average wages, and logistics, when rethinking the structure of supply chains.” See: Ira Kalish and Michael Wolf, “The return of industrial policy,” Deloitte, 12 June 2023, www.deloitte.com/us/en/insights/economy/industrial-policy-us.html.

autonomy' or regulation based on dynamic public-private dialogue and information exchange. The second is to reinforce that industrial policy is not merely about tax breaks and subsidies, but about the coordination of a range of public inputs."²²⁶

In their own words, Rodrik and colleague Mariana Mazzucato describe their approach as follows (emphasis is ours):²²⁷

Industrial policy is experiencing a global resurgence. The governments of Brazil, the European Union, South Africa, and the United States are just a few of those advancing significant investments and policy measures aimed at fostering more competitive domestic industries and catalyzing economic growth. Many of these governments recognize the need for a different type of industrial strategy to those pursued in previous decades – one that not only catalyzes but also directs growth to shape economies that are greener, more inclusive, and more resilient. (...)

Thus, key to a new approach to industrial policy is making sure that directionality of growth (less inequality, more sustainability) is embedded in the tools that lie at the interface of public-private partnerships – subsidies, loans, grants, public inputs, intellectual property rights. Industrial policies can be designed ex ante to enhance public value, including through conditions that maximize public benefits. Conditionalities that grant equitable access and sharing rewards are a central component of shaping the economy for the common good (...)

Some measure of conditionality is inherent in the idea of industrial policy. In principle, public support is provided in return for the recipients undertaking specific actions. But the extent to which conditionality has been explicit and part of a coherent, self-conscious strategy for generating public value has varied. The creation of public value requires the public sector to establish a clear vision and a public purpose that guides the collaboration and innovation of both private and public actors in addressing societal challenges. (...)



²²⁶ Rohan Sandhu, "Bottom Up Bidenomics," *Time*, 16 October 2023, <https://time.com/6324411/bottom-up-bidenomics>.

²²⁷ Mariana Mazzucato and Dani Rodrik, "Industrial Policy with Conditionalities: A Taxonomy and Sample Cases," UCL Institute for Innovation and Public Purpose, Working Paper Series (IIPP WP 2023-07), 2023, www.ucl.ac.uk/bartlett/public-purpose/wp2023-07.

It is generally acknowledged that conditionalities are important to the design of industrial policies and that their absence could hamper success (...) or lead to parasitic relationships, or capture, whereby businesses simply get handouts and subsidies from lobbying (...)

Nevertheless, the idea of conditionality remains hazy, understudied, and underutilized. In this paper we develop a taxonomy to understand the range of conditionalities that governments can consider when structuring calls for proposals, funding agreements, partnership contracts, tax incentives, regulatory frameworks, and other policies aimed at shaping the economy for the common good (Mazzucato, 2022). Using a variety of case studies from around the world and drawn from different domains, we explore the different dimensions of conditionalities and what they can achieve in practice. Our aim is to provide a clear, analytical framework for understanding the concept of conditionality, for exploring the role that conditionality can play in modern industrial strategies oriented around fostering inclusive and sustainable economic growth, and for guiding policymakers in considering how best to maximize the public value of public investments. (...)



Economists might worry that close relationships with private firms would make governments prone to capture. On the other hand, one could argue that when a state is not entrepreneurial and market shaping, it is more likely to be captured as its relationship with the private sector will tend to be more subservient to the needs of business rather than public objectives.

Indeed, conditions create a healthy tension between public and private so that subsidies are part of a 'deal' rather than a blanket handout (Mazzucato, 2022). As sociologist Peter Evans (1995), who coined the term "embedded autonomy" to describe effective industrial policy, argued, these links may be essential to ensure governments have the information needed to design workable policies, adjust to changing circumstances, and prod firms along new technological trajectories in the most effective ways possible. The difference between South Korea, on the one hand, and other less successful cases that Evans analyzed such as India and Brazil, was less in the formal instruments, and more in the manner in which this cooperative relation was managed dynamically over time. (...)

Industrial policy is back on the agenda, and it requires bold rethinking. It is not enough to guide investments in desired directions; it is also necessary to ensure the benefits are as widely shared as possible. **Conditionalities are one powerful tool that governments can use to co-shape investment and co-create markets with the private sector. Indeed, with conditions, industrial policy can lead to transformation. Without conditions, it might just lead to subsidies, guarantees, and handouts for firms to stay in place. Such transformation can be at the heart of a development strategy, especially for countries that experience inertia in business investment.** When companies receive public investments in the form of subsidies, guarantees, loans, bailouts or procurement contracts, conditions can be imposed to help guide innovation and steer growth towards achieving the highest public benefit. For example, procurement can be made conditional on greener supply chains, reinvestment of profits and better working conditions. Of course, too many conditions can also stifle innovation. Thus, the design challenge is to have conditions that set a direction, while leaving open the how-to experimentation and discovery. (...)

In the context of a shift towards longer-term, public-value-oriented economic thinking, there is a real opportunity to reimagine the contracts that structure public-private relationships. **Similar reasoning could also be relevant to the relationship between different public entities, such as the relationship between a country's state-owned enterprise and the Treasury: benefits to the SOE can be structured with conditions to make sure the SOE directs its investments in particular ways, shares knowledge, makes products/services accessible, etc. Redesigning these contracts means redesigning the direction of the economy from the ground up.** To succeed, modern industrial policies must be deliberately sustainable, welfare-oriented, and innovation-led; coordinated as a holistic package; and implemented cooperatively across government agencies and with the private and third sectors. The conditionalities written into contracts are a key site for realizing these aims. This paper provides a typology of the key dimensions of conditionalities and aims to illuminate how these dimensions can be applied to catalyze investment, innovation and growth that is aligned with the goal of shaping more sustainable, inclusive, and resilient economies.



As we can see, Rodrik and Mazzucato consider both capture and monopolies as inherent problems of industrial policies that do not incorporate conditionalities — for example, in public contracts — to ensure that public-private relationships act in the public interest for the common good. This is the heart of their argument.

Throughout our interviews and literature review focused on the Global South, Empower asked and searched for references or ideas regarding how progressive industrial policies may already be used — or could be used — to further the goals of anti-corporate capture work at national or international levels. However, we uncovered surprisingly little in this regard, save what follows:

- **Collective bargaining and codetermination:** The concept of organized labor participating in corporate governance and management of the companies where their members work — standard practice in Germany but a rarity elsewhere — provides an opportunity, on one hand, for firm-level and perhaps sectoral-level oversight of specific corporate capture practices and, on the other hand, to provide political education to firms and workers about the phenomenon of corporate capture. While the German model is intriguing, other countries, for example recently Chile under President Gabriel Boric (2022-26), have sought to replicate it but with little political support for change.²²⁸
- **Human and labor rights linkage to free trade agreements (FTAs):** The U.S.-Mexico-Canada Agreement (USMCA, or NAFTA 2.0) — specifically the Chapter 31, Annex A, Facility-Specific Rapid-Response Labor Mechanism, Frequently Asked Questions on Labor Chapter Petitions, Chapter 15 Cross-Border Trade in Services, and the USMCA Implementation Act — was offered as a model of how FTAs can be used both to establish specific obligations regarding rights-based compliance as well as the need for signatory States to adapt their regulatory frameworks in order to comply.
- **Due diligence laws:** (See also [Business and human rights framework](#) section below.) According to Conectas, “The due diligence laws being discussed in different countries, particularly in the European Union, could, if minimum conditions are guaranteed, represent the possibility of building pro-worker policies. This is because, especially in exporting countries such as Brazil, such legislation raises concerns about the loss of market share due to possible accusations against or convictions of large companies for the unworthy working conditions of their suppliers. Due to the strength of commodity producers in their countries and even the state’s interest — which is dependent on this export economy — there have already been some moves, including by the state machine itself, to improve working conditions in some sectors. For this to be a continuous, progressive and efficient movement, however, it is necessary to ensure that these laws are no more than mere intentions or market protections and can

²²⁸ Cristián Dümmer, Director of Strategic Planning, Codelco (Chile), Interview on 27 August 2023.

have a practical effect on corporate accountability and social dumping, serving as an example to the corporate world.”²²⁹

- **Worker ownership through anti-monopoly regulation:** In South Africa, for example, there is an option — not a requirement, however — through competition law and policy during large mergers to increase worker ownership through shareholding.²³⁰

“In South Africa, competition policy was actively developed to address concentration with a view to redressing the past. The preamble to the Competition Act notes, firstly, that apartheid and discrimination in the past have led to excessive concentration of ownership and control, and secondly, that the economy must be open to greater ownership by a greater number of South Africans. It also explicitly notes a balance of the interests of workers, owners and consumers, and is focused on development. As such, competition policy in South Africa has broader objectives than many other jurisdictions. This is clear throughout the Competition Act. For example, in South African competition law, regulation over ownership is engaged in through approval of mergers and acquisitions. This enables oversight to prevent unnecessary concentration of the economy. (...) Worker ownership is one method to increase asset distribution that is typically broad-based. It has benefits for workers as well as companies and is widely being considered in policy discussions locally and internationally. When large companies incentivise worker ownership there are two approaches: ‘the carrot’ of favourable incentives, such as [Black Economic Empowerment] points or tax incentives, and ‘the stick’ which is mandated by legislation where non-compliance can be penalised. Mandatory requirements for worker ownership can be crafted through various means, including amending company laws, or situating it within the larger BEE framework.”²³¹

- **SOEs as a model of public interest governance and regulation of strategic assets and sectors:** According to Codelco, the Chilean State-owned copper mining company, which includes copper and lithium, “We have a very clear mandate to maximize the value of the market that has been entrusted to us. We are subject to transparency and other legislation. It is a kind of barrier with respect to the political will of different governments in power. The corporate governance law that governs us establishes a separation from the Codelco government, which is more specialists-based. The participation of the State is to have an influence on where a business is run, but not to develop certain programs. The resources generated can end up in social programs through tax mechanisms and budget programming, but that does not depend on us. (...)”

²²⁹ Conectas (Brazil), Interview questionnaire, 21 September 2023.

²³⁰ Representative of the management team, Centre for Applied Legal Studies (CALs) (South Africa), Interview on 21 September 2023.

²³¹ Sha’ista Goga and Imraan Valodia, “Ownership and Inequality: Policy Interventions in South Africa and Possible Ways Forward,” *Pre-Distribution and Ownership Project*, SCIS Working Paper, Number 41, Wits University, November 2022, <https://wiredspace.wits.ac.za/server/api/core/bitstreams/c39e4e37-5bcf-43ec-ae51-0516caf6b0a9/content>.

The composition of our corporate governance is: Three of the nine belong to the government; two are appointed by and come from the workers; and four are professionals who come from both center-right and left-wing sectors. (...)

The question we have is how to maximize the growth of the sector in a healthy way, to maximize income to the nation so that it can invest in other types of programs. A corporate government must ensure that it is insulated from political cycles that can be ups and downs in governance, and that can be risky. (...)

The Codelco corporate governance law is from 2009 and establishes the administration and corporate board. It came to complement the organic law. Codelco and the Chilean copper commission were created, they're more technical in nature. Mining property law belongs to all Chileans. Before that law, Codelco could not do anything with those mining assets, our hands were tied. Law 1992-93 freed us to set up companies with third parties. This is regulated quite successfully and allows the State to protect mining assets and profits. The board of directors approves the partnerships, we have to do a background check before making the tenders, that it is an ethical partner that does not have trials or criminal procedures, it is something that we review before creating a partnership."²³²

3.9 Transparency

The right to know, including to access information in the public interest in a useful format, is a harbinger of accountability processes writ large. The corporate capture of the State is no exception. If we are to solve the black box problem — How do we know if capture happens if there's no proof? Without documents, witnesses, or transactional evidence, how can we identify capture? — we must obtain data, transactional evidence, and methodologies to identify, track, and measure capture. As Andreas Fiebelkorn of the World Bank reminds us, “empirical evidence of state capture requires cross-validating three data components...Political connections: Who is connected with whom and to what degree? (...) Capture mechanism: What are the mechanisms through which politically connected actors receive policy favors? (...) [and] Firm-level indicators: What is the impact of capture?”²³³

The main opportunities, strategies, and innovations regarding corporate capture are beneficial ownership registries, corporate disclosure, fiscal transparency, and freedom of information laws.

²³² Cristián Dümmer, Director of Strategic Planning, Codelco (Chile), Interview on 27 August 2023.

²³³ Andreas Fiebelkorn, "State Capture Analysis. How to Quantitatively Analyze the Regulatory Abuse by Business-State Relationships," The International Bank for Reconstruction and Development / The World Bank, June 2019, <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/785311576571172286/state-capture-analysis-how-to-quantitatively-analyze-the-regulatory-abuse-by-business-state-relationships>. Pgs. 10-11.

3.9.1 Beneficial ownership registries

As mentioned in the previous chapter, the challenge of not knowing who ultimately benefits from a business or transaction effectively means that we cannot know which human beings act as the subjects supplying the “favors” to the public officials who are the object of capture. To this effect, since at least the 2010s, a couple of organizations — most prominently Open Ownership and EITI — have been engaging with governments worldwide to implement beneficial ownership reforms, including new laws and registries to disclose the true owners of corporations. This process has been slow. By 2022, only 79 countries had beneficial ownership registration laws.²³⁴ And an even smaller subset — 15 at most — had implemented effective, transparent registries.²³⁵

Leading the way on this has been Open Ownership (OO). “Since 2017, OO has worked with almost 40 countries to advance implementation of beneficial ownership reforms, as well as supporting the creation of over 15 new central and sectoral registers. OO has developed the world’s leading data standard for beneficial ownership information, co-founded the international Beneficial Ownership Leadership Group, and built the world’s first transnational public beneficial ownership register.”²³⁶

Critically, OO defines beneficial ownership and works with governments and other stakeholders to figure out how to “transparentize” and make accessible this information. OO uses the following definitions: “A beneficial owner is defined as the natural person who can be found at the end of an ownership chain. Often there is just a single link between a beneficial owner and a company, but sometimes it can include long and complex ownership chains of multiple legal entities. A beneficial owner is a person who ultimately has the right to some share of a legal entity’s income or assets, or the ability to control its activities. Beneficial ownership transparency reveals how companies and other legal entities or arrangements, such as trusts, are owned and controlled by their beneficial owners.”²³⁷

Together with Open Ownership, EITI has promoted beneficial ownership transparency as part of the EITI Standard and, within the multi-stakeholder initiative, has worked with governments to implement public ownership registries. “The EITI and Open Ownership (OO) have partnered to deliver Opening Extractives, an ambitious global programme to catalyse the availability and use of beneficial ownership data. The programme combines political and technical engagement with participating countries to implement reforms

²³⁴ Andrés Knobel, “Beneficial ownership registration in 2022: developing countries lead the way,” Tax Justice Network, 15 December 2022, <https://taxjustice.net/2022/12/15/beneficial-ownership-registration-in-2022-developing-countries-lead-the-way>.

²³⁵ Oscar Pineda and Daniel Castrejón, PODER, Interview on 31 July 2023.

²³⁶ “What we do,” Open Ownership, n.d., www.openownership.org/en/about/what-we-do.

²³⁷ “What is beneficial ownership transparency?” Open Ownership, n.d., www.openownership.org/en/about/what-is-beneficial-ownership-transparency.

on beneficial ownership disclosure in the extractive sector. Opening Extractives aims to deliver clear improvements to domestic resource mobilisation from the extractive sector in participating countries by the end of 2025. It builds on the collaboration of OO and the EITI over the last three years in delivering workshops, training and technical assistance in a broad range of countries.”²³⁸

According to EITI, the state of beneficial ownership (BO) disclosure is as follows:²³⁹

- Lagging and real-time BO registries: Norway, Holland, Philippines, Ukraine, and the UK (partially)
- Only 20% of the 57 EITI countries have BO registries.
- Transparency about government revenues from the extractive sector is important but says little about who ultimately benefits from the activities of companies in the oil, gas, and mining sectors.
- The EITI requirement for beneficial owners has triggered substantial reform efforts, as each country's "roadmaps" detail the legal, regulatory, and administrative reforms deemed necessary to achieve transparency regarding beneficial owners.
- Some companies will amend their laws related to hydrocarbons or mining, while others will introduce transparency regarding beneficial owners in corporate laws or specific legal instruments.
- Since ownership or control of a company can take various forms (shares, voting rights), each country must develop its own definition of beneficial owners based on national laws and contexts.
- The criteria and characteristics of beneficial owners identified by EITI-affiliated countries are as follows: the person must be real and alive, not a representative or nominee, may not have formal ownership in the company but must benefit economically from it, may have shares or voting rights in the company, or may control it through other means.
- Knowing the true owners (beneficial owners) of operations in the extractive sector would allow for the identification of companies involved in corruption or tax evasion.
- Data collected on beneficial owners include the owner's identity (name, nationality, and country of residence). Additionally, politically exposed persons must be identified. Prosecutors and civil society can access and verify the information to demand accountability from those misusing anonymous companies.

²³⁸ "Opening Extractives," EITI, n.d., <https://eiti.org/opening-extractives>.

²³⁹ "Disclosing Beneficial Ownership", EITI, May 2017, <https://eiti.org/beneficial-ownership>.

An example of beneficial ownership adoption is the process that South Africa has undertaken following recommendations by the Zondo Commission. “Beneficial ownership transparency is something that South Africa is adopting, at least in theory, through the Financial Action Task Force. The problem with the Gupta family was that they had a lot of shell companies in and outside the country. One of the reforms in South Africa is the creation of a registry of beneficial ownership (Companies and Intellectual Property Commission controlled by the Trade and Industry Minister). The legislation is unclear about who gets access to the database and how transparent it will be. Beneficial ownership transparency is useful, but it is more useful if you can access registries in other jurisdictions. For example, you could trace the Guptas’. The money laundering regulations leave much to be desired. But beneficial ownership transparency is not on the agenda of civil society.”²⁴⁰

3.9.2 Corporate disclosure

The challenge posed by corporate disclosure is that, to a certain extent, it is getting worse, not better. In *Runaway Train* we wrote that “Whereas securities laws in the U.S. — the world’s financial capital — were meant to incentivize firms to “go public” by allowing them to raise capital from retail investors in exchange for publicly disclosing their financial performance and risks, over time this ‘disclosure quid pro quo has been subverted.’ Today, publicly-traded companies must still disclose while capital increasingly flows into opaque private markets that aren’t subject to the same rules. Regulators not only turn their cheeks — they actively encourage this shift away from public scrutiny.”²⁴¹

The capture of securities and exchange commissions and other banking and financial regulators worldwide has largely contributed to the capital shift from public to private markets, as well as declining regulations for disclosure in public markets.²⁴² That said, there is still hope, primarily in large financial markets whose regulations proportionally apply to a large swath of businesses worldwide given their need to seek equity or debt financing in cities such as New York, London, and Tokyo. Opportunities for improved corporate disclosure in the U.S. and UK, for example, include: implementing the entire U.S. Dodd-Frank Act (2010); enforcing the U.S. Holding Foreign Companies Accountable Act (2020), which amends Sarbanes–Oxley to require companies that publicly list in the U.S. to disclose to the SEC that they are not owned or controlled by any foreign government; enforcing the U.S. Corporate Transparency Act (2020); passing U.S. Senator Elizabeth Warren’s Stop Wall Street Looting Act (SWSLA); and enforcing the new Economic Crime and Corporate Transparency Act in the UK, which

²⁴⁰ Devi Pillay, Researcher, PARI, Interview on 4 September 2023.

²⁴¹ *Runaway Train: The Perilous and Pernicious Path of Private Capital Worldwide*. Empower. 2021. <https://empower-llc.net/en/issues/private-capital>. Pg. 17.

²⁴² *Ibid.*

became law in October 2023 and, among other items, will close important beneficial ownership and anti-money laundering loopholes.^{243,244}

Globally, opportunities for improved corporate disclosure include expanding the modern slavery acts and due diligence laws to cover more home and host States; passing meaningful ESG legislation with clear and standard indicators so that companies report on a large swath of their environmental, social, and governance activities and impacts; compelling companies to disclose their climate impacts and measures to address them; and following the lead of the OECD's common reporting system (CRS) rules to track wealthy individuals' money.²⁴⁵

3.9.3 Fiscal transparency

In 2018, The Fiscal Futures Project was launched by the International Budget Partnership, Transparency and Accountability Initiative, and the Carnegie Endowment for International Peace. The goal was to bring together advocates and practitioners of fiscal transparency and accountability to imagine how fiscal transparency and accountability might look 20 years from now. Empower participated in this dialogue. What follows are the recommendations from this process:

The fiscal T/A field is showing a growing interest in country-based work on taxation. Both the Third Financing for Development Conference (Addis Ababa, July 2015) and the World Bank have recently called on countries in the South to take a lead in mobilizing the financing for their development. Some see this new international emphasis on domestic resource mobilization (DRM) as a promising entry point for more integrated tax and spending initiatives. While there are concerns that increased DRM could result in a greater tax burden on people living in poverty, research suggests that progressive taxation combined with other fiscal measures could open up fiscal space for social protection and the realization of SDGs even in the poorest countries.

Many interviewees are encouraged by popular resistance movements around the world creating new spaces for civic

²⁴³ *Ibid.* Pgs. 177-78.

²⁴⁴ "Robust new laws to fight corruption, money laundering and fraud," Gov.uk, 26 October 2023, www.gov.uk/government/news/robust-new-laws-to-fight-corruption-money-laundering-and-fraud#:~:text=The%20Economic%20Crime%20and%20Corporate,Assent%20on%20Thursday%2026%20October.&text=Robust%20laws%20to%20fight%20fraud,business%20received%20Royal%20Assent%20today.

²⁴⁵ *Ibid.* Pgs. 178-80.

engagement. Globally, much collective action is targeting the rising inequality and concentration of wealth and power in the hands of a few — concerns that are clearly related to demands for fiscal accountability. At the national and local levels, people are also mobilizing against the misuse of public resources through corruption. They have successfully pushed political changes in countries such as South Africa, where civil society groups now see an opening.

Since some T/A efforts may have simply assumed that information is power, the use of power analysis remains underdeveloped in the T/A field writ large, and with regard to public finance issues in particular. Some argue that the choice of key concepts, in particular ‘openness’, prevents the development of a political language that can recognize power dynamics. Once something is labeled ‘open’, it may render the operations of power, and the inevitable closures these entail, invisible. There is, however, broad agreement that fiscal T/A initiatives must pay closer attention to the political economy of particular systems and contexts.

Many seek to challenge the paradigm of macroeconomic stability, growth, and fiscal discipline that neglects the distributional and developmental impacts of public finance decisions and contributes to rising income and wealth inequity. They re-envision fiscal T/A as part of a broader political project of advancing equity, which would require both fiscal governance systems and fiscal policies to function in ways that redistribute power and resources.²⁴⁶



²⁴⁶ Anja Rudiger, "Fiscal Transparency and Accountability. Research Note for the Fiscal Futures' Scenario Planning Workshops," Carnegie Endowment of International Peace/International Budget Partnership/Transparency and Accountability Initiative, June 2018, <https://internationalbudget.org/wp-content/uploads/state-of-the-field-review-fiscal-transparency-and-accountability-2018.pdf>. Pgs. 11, 20, and 24.

3.9.4 Freedom of information

One of the essential pillars for the protection and guarantee of human rights is the effective exercise of the right to access information, a fundamental component for activating and promoting citizen participation in public affairs. This right lies at the heart of campaigns for justice and accountability across the world, whether the Indian farmers' protests in 2020-21 or the Río Sonora Watershed Committees' decade-long campaign to learn how their public health was affected by Mexico's worst-ever environmental disaster.²⁴⁷ These movements demand information from governments because it is both their right and because it serves the public interest. Again, the corporate capture of the State is no exception.

Generally, in terms of the right to access information, many countries already have a robust legislative framework. With exceptions, the problem is not often the legality or regulation of transparency, but rather the lack of enforcement or exceptionality with which governments treat the public information in their care. Such exceptions include "the lack of clear and specific criteria for reserving information due to commercial secrecy or national security, which opens the door to discretion when deciding which information should not be made public." Another problem is "the lack of a legal framework that obliges the disclosure of beneficial owners of concessionaire companies or contractors." This results in "the lack of information generation or the drafting of [freedom of information disclosures] with low-quality standards, which, on the one hand, allows companies to conceal actions that are outside the law and, on the other hand, enables governments to hide information about the income they receive" (...).²⁴⁸

According to a report by PODER commissioned by Oxfam México, "With better information, companies, lenders, and investors can assess the impact of their business relationships and investments and reduce corruption risks throughout their supply chain. At the same time, buyers and consumers can know the origin of the products they are purchasing and be more responsible in their decision. By knowing the beneficial owners of the companies, government entities can improve surveillance and monitoring processes to reduce market distortions and identify and sanction conflicts of interest and acts of corruption more effectively and promptly. ... In this process, knowing the beneficial owners is crucial because, on the one hand, it allows civil society to unmask the actors benefiting from natural resource exploitation, and on the other hand, it enables dismantling state capture and advancing environmental justice."²⁴⁹

²⁴⁷ "Quiénes Somos," Comités de Cuenca Río Sonora, n.d., <https://comitescuencariosonora.wordpress.com/quienes-somos>.

²⁴⁸ Mariana Gutiérrez, Gina Chacón, Julieta Lamberti, and Omar Escamilla, "Los beneficiarios reales de las industrias extractivas en México. Minería e hidrocarburos," PODER/Oxfam México, July 2019, <https://poderlatam.org/wp-content/uploads/2020/02/InformeBeneficiariosReales.pdf>.

²⁴⁹ *Ibid.*

3.10 Treaty-level agreements

At the highest level — globally and multilaterally — the rules of the game are first decided through treaties. Consequently, treaty bodies and processes are frequently mentioned as both vulnerable points for capture as well as scalable opportunities to stop capture. In terms of strategies and innovations, what follows are examples that arose from our interviews and literature review:

3.10.1 International Commission against Impunity in Guatemala (CICIG)

The CICIG was a treaty-level agreement established between the United Nations and the Government of Guatemala to investigate and help prosecute illegal security forces. It lasted for 13 years until the president of Guatemala unilaterally ended the country's participation in 2019. During its mandate, the CICIG investigated well over 100 criminal networks and succeeded in dismantling more than 70 of them. “For Guatemalans, the CICIG was an essential anti-corruption mechanism, which later expanded to take on fiscal issues, corruption in the public sector, financing of political campaigns, and money laundering.”²⁵⁰

Among its many cases, the CICIG dealt with capture on more than one occasion. Most notably, “Discovered by the Department of Justice and the CICIG on June 2, 2016, the [case of widespread massive government fraud] originally sprung from the investigations into the then-fledgling La Línea case. The initial wiretapping that formed part of the investigation led to the discovery of a fully-formed criminal organization, which reached then President Otto Pérez Molina and then Vice President Roxanna Baldetti. In subpoenaing seemingly innocuous documents (tax statements), investigators were able to piece together an immense financial scheme, which reported fraud stretching back to 2008. The case also revealed an intricately connected money laundering scheme meant to enrich the Partido Patriota, whose platform captured the government in 2011; the scheme continued until the resignation of the President and most of his associated cabinet. In this way, various government institutions were co-opted by the scheme which used its widespread network to illegally enrich its colluders.”²⁵¹

The innovation of the CICIG was to use a treaty-level mechanism to criminally investigate and prosecute instances of grand corruption, including State capture. The potential and scalability of such a mechanism for other countries and situations is promising.

²⁵⁰ “Preguntas Frecuentes,” CICIG, n.d., www.cicig.org/cicig/preguntas-frecuentes.

²⁵¹ “International Commission against Impunity in Guatemala,” Wikipedia, n.d., https://en.wikipedia.org/wiki/International_Commission_against_Impunity_in_Guatemala.

3.10.2 Binding Treaty on Transnational Corporations and Human Rights

The Binding Treaty — “the U.N. Human Rights Council passed Resolution 26/9, which established an open-ended intergovernmental working group (IGWG) with a mandate to develop an international legally binding human rights treaty to regulate the activities of transnational corporations and other business enterprises”²⁵² — is a space characterized by the hopes, hard work, and innovation of advocates, communities, rightsholders, and other stakeholders worldwide. The process to propose, negotiate, and eventually ratify the Treaty, which began in 2014, has prominently featured leadership from the Global South, where many organizations see this as a chance to at least partially correct the power imbalances of other spaces dominated by companies and organizations from the Global North. In particular, the ESCR-Net’s CAWG has been a key organizer globally, ensuring the authentic participation of different experiences and voices in this process.

Unlike the U.N. Guiding Principles on Business and Human Rights, which has become a space categorically labeled as captured, the Binding Treaty largely remains a civil society - State dialogue at the global and national levels, with meaningful but ringfenced participation for corporations in the negotiations. A key concern of CSOs has been to ensure that the Binding Treaty process does not succumb to corporate capture, as corporate lobbyists and associations have attended many of the negotiations.²⁵³

The potential of the Binding Treaty to address and remedy corporate-sponsored human rights violations, both nationally and extraterritorially, not to mention corporate capture, cannot be overstated. According to Tchenna Maso from Brazil, “It’s why it is critical to link our struggles with others at an international level, to work together and explore new forms of struggle against an architecture of impunity. The campaign for a Binding Treaty for example has been critical in bringing organisations together internationally and showing through our different experiences how states are not in the service of people.”²⁵⁴

And, according to Conectas, the process itself — even prior to ratification — has already had an impact on accountability. “It is important to emphasize that corroborating corporate accountability is essential to approve the Human Rights and Business Treaty as an instrument that could encourage states to improve their legislation and public policies and to protect human rights from the power of corporations. Recently, the Federal Prosecutor’s Office for Citizen’s Rights (PFDC), a body linked to the Brazilian Federal Public Prosecutor’s Office, shared a note with the Brazilian government with [inputs] for the new treaty draft. It recognizes that the Brazilian regulatory field is advanced and

²⁵² Shobna Shukla and Bobby Ramakant, “Pandemic is over but the fight to end corporate capture of healthcare intensifies,” *Daily Kashmir*, 13 May 2023, www.citizen-news.org/2023/05/pandemic-is-over-but-fight-to-end.html. Pg. 5.

²⁵³ Bobby Ramakant, Policy Director, Citizen News Service (India), Interview on 8 September 2023.

²⁵⁴ “Fighting Vale and corporate capture in Brazil. Interview with Tchenna Maso,” Transnational Institute, 4 February 2020, www.tni.org/en/article/fighting-vale-and-corporate-capture-in-brazil.

imposes standards of conduct on companies, but also that the country is still vulnerable to various forms of violation, especially in the context of global value chains.”²⁵⁵

In terms of how to improve the Binding Treaty, there are numerous civil society recommendations,²⁵⁶ including:

- The International Corporate Accountability Roundtable (ICAR) and SOMO issued a statement to support Article 15.3 of the Zero Draft, which addresses the issue of corporate capture. However, they recommend that it be amended as follows: “In the context of trade, article 15.3, read in conjunction with article 13.6, would provide protection for states to exercise their sovereign right to negotiate trade and investment agreements free from undue corporate influence. Therefore the treaty must contain a provision seeking to protect legislative and policy-making spaces from undue corporate influence. Such a provision should however be included in article 9, since it is essentially a preventive measure. Moreover to be truly effective, the language 'in accordance with national law' should be removed from the provision. The text could also include concrete measures to protect from undue corporate influence, such as prohibition of revolving doors, measures to increase transparency, and prevent conflicts of interest.”²⁵⁷
 - According to CIDSE (International Cooperation for Development and Solidarity), “Some of the most important omissions highlighted in the analysis are:
 - Human rights, environment and climate change: the Updated Draft falls short of previous drafts in addressing the issues of environmental damage and climate change...
 - Access to justice and remedy: (...) the reversal of the burden of proof (...) is not made a necessary requirement (...)
 - Due diligence: (...)The provisions of the Updated Draft are insufficient and must be strengthened to ensure meaningful and effective participation of all relevant stakeholders.

²⁵⁵ Conectas (Brazil), Interview questionnaire, 21 September 2023.

²⁵⁶ “Bridging the gap: A stronger Binding Treaty for all - Webinar series,” BHRRC, October 2023, www.business-human-rights.org/en/big-issues/binding-treaty/bridging-the-gap-a-stronger-binding-treaty-for-all-webinar-series-2/#webinar2.

²⁵⁷ “Oral statement by ICAR and SOMO, Article 15 on Final Provisions”, International Corporate Accountability Roundtable (ICAR) / Center for Research on Multinational Corporations (SOMO), 19 October 2018, www.somo.nl/wp-content/uploads/2018/10/Corporate-capture.docx.

- Legal liability: (...) The Updated Draft represents a step back, by allowing States Parties to modify domestic legal principles to qualify their compliance with liability requirements” (...) ²⁵⁸
- CALS and other South African CSOs, which have been quite involved in the Binding Treaty process, mention that the African Commission on Human and People’s Rights (ACHPR) recently passed a new resolution on business and human rights. As a Binding Treaty is unlikely to address all needs, having a regional treaty is a complementary measure for accountability in Africa. ²⁵⁹

3.10.3 Global Tobacco Treaty

Several advocates point to the World Health Organization Framework Convention on Tobacco Control, a treaty adopted in May 2003, as an example of how to use treaties to prevent corporate capture. ²⁶⁰ Namely, the guidelines for Article 5.3 — which states: “In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law” — contain four important principles:

- “There is a fundamental and irreconcilable conflict of interest between the tobacco industry and the interests of public health policy.
- Those working with the tobacco industry or to advance its interests must be held accountable and be transparent.
- Require the tobacco industry and those working with them to be accountable and transparent.
- Since their products are lethal, no incentives should be offered for tobacco industry businesses.” ²⁶¹

²⁵⁸ “Call for a strong Binding Treaty,” CIDSE, 19 October 2023, www.cidse.org/2023/10/19/press-release-call-for-a-strong-un-binding-treaty.

²⁵⁹ Representative of the management team, Centre for Applied Legal Studies (CALS) (South Africa), Interview on 21 September 2023. See also: “Resolution on Business and Human Rights in Africa - ACHPR/Res.550 (LXXIV) 2023”, ACHPR, 21 March 2023, <https://achpr.au.int/index.php/en/adopted-resolutions/550-resolution-business-and-human-rights-africa-achpres550-lxxiv-2023>. Accessed February 1, 2024.

²⁶⁰ Bobby Ramakant, Policy Director, Citizen News Service (India), Interview on 8 September 2023.

²⁶¹ Bobby Ramakant, “What can we learn from industry interference around the global tobacco treaty?,” Business & Human Rights Resource Centre, 21 July 2015, www.business-humanrights.org/en/blog/what-can-we-learn-from-industry-interference-around-the-global-tobacco-treaty.

3.11 International and multilateral institutions

Similar to treaties, the opportunities presented by international and multilateral institutions to address the corporate capture of the State at the highest levels are scalable insofar as their coercive and normative power to influence policy-making worldwide.

3.11.1 World Bank

The prime example of this is the World Bank, where the “godfather of State capture,” Daniel Kaufmann, was a lead economist and senior manager of the World Bank Institute’s Governance, Regulation, and Finance Group. The Bank has consistently played an important role in defining, studying, and disseminating scholarly work and policy papers about State capture. If anything, the World Bank should maintain Kaufmann’s role in perpetuity — as it has done with Andreas Fiebelkorn (until August 2022) — and inculcate his function more transversally across other international financial institutions, such as the European Bank for Reconstruction and Development where Fiebelkorn currently works.

3.11.2 U.N. Conference on Trade and Development (UNCTAD)

UNCTAD, which promotes the trade interests of developing nations in the global arena, operates within the United Nations Secretariat as an intergovernmental organization. Several interviewees mentioned UNCTAD as a more independent alternative to the OECD, which largely represents Global North interests and is considered quintessentially captured — on par with the UNGPs writ large. On the contrary, UNCTAD has a mandate to represent Global South interests and fosters meaningful civil society participation.

3.11.3 U.N. Convention against Corruption (UNCAC)

Similarly to the potential of UNCTAD, the Convention against Corruption is another non-OECD opportunity to address corporate capture, as “the only legally binding universal anti-corruption instrument. UNCAC’s far-reaching approach and many mandatory provisions makes it a unique tool for addressing a global problem. The United Nations Office on Drugs and Crime (UNODC) serves as the custodian of the Convention and as the Secretariat of its Conference of States Parties. The Convention covers five main areas: preventive measures, criminalization and law enforcement, international cooperation, asset recovery, and technical assistance and information exchange. The Convention covers many different forms of corruption, such as bribery, trading in influence, abuse of functions, and various acts of corruption in the private sector.”²⁶²

²⁶² “UNCAC,” Stolen Asset Recovery Initiative, The World Bank and UNODC, n.d., <https://star.worldbank.org/focus-area/uncac#:~:text=About%20UNCAC&text=The%20Convention%20covers%20five%20main,technical%20assistance%20and%20information%20exchange>.

3.11.4 United Nations

Throughout the early negotiations to create the U.N. Guiding Principles on Business and Human Rights, dating back to at least 2008, and more recently during the process to negotiate a Binding Treaty, since at least 2014, CSOs have expressed concern about the corporate capture of these processes and of the U.N. in general. In a 2021 comic, the ESCR-Net's CAWG even lampooned the U.N. in "Comic Series: The Power of the 99% to Stop Corporate Capture." Their concerns, unfortunately, have significant merit.

The CAWG has identified various forms of corporate capture in multilateral platforms, such as political and legislative interference, the "revolving door," and "economic diplomacy" in which States prioritize corporate elites' interests over the rights of the population. In recent decades, corporate capture has been normalized through the discourse and institutions of multistakeholderism that involve corporations in policy formulation, increasing their influence in decision-making. Corporate capture has been driven by the dependence of multilateral institutions on private financing (due to States' failure to pay their contributions, earmarking funds to serve their interests and those of their corporations, and falling tax revenues during neoliberalism).

"Time and again, ESCR-Net members have demanded that whatever shape or form the treaty meetings take, affected communities and their representatives, human rights defenders, workers, and social movements from around the world must be at the heart of multilateral public-decision making processes through effective and meaningful participation in this process. We believe that in order for the treaty to be effective, States must ensure this process is protected from corporate capture by the wealthiest 1% and economic elites. For the past few years, ESCR-Net members have been highlighting the example of the World Health Organization's Framework Convention on Tobacco Control (FCTC) which provides a powerful precedent for protecting policymaking from industry interference. The FCTC explicitly recognizes the tobacco industry's irreconcilable conflict of interest with public health policymaking and measures have been put in place to protect treaty processes and implementation from industry interference."²⁶³

In a separate document, InfluenceMaps shares a similar analysis: "Corporations have unmatched access and influence at the [International Maritime Organization] compared to other UN bodies, providing the shipping industry with a clear avenue to shape policymaking. An analysis of other UN agencies indicates that while trade associations are typically granted access to committee meetings, similar to the IMO, at no other UN agency researched do corporations attend committee meetings as formal state representatives. Furthermore, other UN agencies have introduced or are considering rules to limit corporate influence at committee meetings. Most notably, the World Health Organization (WHO) in 2003 adopted the global tobacco treaty that completely

²⁶³ "Corporate capture of the United Nations," ESCR-Net, 11 February 2021, www.escr-net.org/news/2021/background-document-corporate-capture-united-nations.

excludes the tobacco industry from the WHO policymaking process due to its historical obstruction of tobacco control legislation.”²⁶⁴

3.12 Business and human rights framework

In many ways, as described by the CAWG and others, the United Nations business and human rights work has split into two camps: the insiders — represented by States, multinational corporations, and international NGOs — and the outsiders — represented by smaller States in the Global South, social movements, human rights organizations, and community-based organizations. The insiders, on one hand, have pushed and continue to work for the implementation at the national level of the Guiding Principles on Business and Human Rights (UNGPs), a voluntary set of guidelines adopted in 2011. The outsiders, on the other hand, have placed their bets on the Binding Treaty, seeking an obligatory mechanism with extraterritorial jurisdiction that allows for stronger accountability and remedy for corporate-sponsored human rights violations in both home and host States.

Within the framework of these two mechanisms — which comprise a variety of laws, national action plans, and voluntary initiatives — the core recommendation gleaned from our interviews and literature review is to ground policymaking in and measure its effectiveness using human rights outcomes in both the social and environmental spheres. The thinking is that both the UNGPs and the Binding Treaty are expressions of commercial logic — particularly the emphasis on corporate respect and remedy for business impacts —, which does not prioritize human rights outcomes above all other policy goals; if we could flip this, then a significant reduction in corporate capture and impunity would follow.²⁶⁵

Beyond this recommendation, what follows are general opportunities and strategies for using the business and human rights framework to address and stop corporate capture. To be clear, with the exception of constant yet somewhat marginal critiques of capture within the UNGP and Binding Treaty processes by CSOs, capture is not an active discussion in either of these processes. What follows are opportunities for organizing, advocacy, political education, and shaping the narrative that hold potential to elevate and scale discussions and proposals about capture if CSOs and other concerned stakeholders choose to do so.

²⁶⁴ "Corporate capture of the International Maritime Organization. How the shipping sector lobbies to stay out of the Paris Agreement", InfluenceMap, October 2017, <https://influencemap.org/report/Corporate-capture-of-the-IMO-902bf-81c05a0591c551f965020623fda>.

²⁶⁵ Leilani Farha, Executive Director, The Shift (Canada), Interview on 14 September 2023.

3.12.1 Latin American Civil Society Platform on Business and Human Rights

The *Plataforma Latinoamericana de la Sociedad Civil sobre Derechos Humanos y Empresas* is an example of how civil society organizations, social movements, and other rightsholders are using the business and human rights framework as an opportunity to organize and advocate collectively with a more powerful voice for human rights outcomes in these processes. Similar efforts already exist at the national level — for example, the Civil Society Working Group on Business and Human Rights in Mexico and the Human Rights Roundtable Against Business Power in Colombia^{266, 267} — and in other regions — for example, the African Coalition for Corporate Accountability. These examples are models of how civil society can innovate to advocate more forcefully within multi-stakeholder or policymaking fora.

The Latin American Platform was formed in 2022 but became more active in October 2023 at the VIII U.N. Regional Forum on Business and Human Rights. Its members include ESCR-Net, Human Rights Roundtable Against Business Power, BHRRRC, PODER, OXFAM, ProDESC, and Conectas, among 16 others. As a coalition, its advocacy and capacity-building activities include promoting due diligence laws, socializing how to use global laws and mechanisms, and sharing individual case work. The range of issues that it works on include: due diligence, finance and human rights, extractive industries and the energy transition, human rights defenders and the Escazú agreement, agribusiness and responsible business conduct, and critical analysis of both U.N. processes.^{268, 269}

3.12.2 NAPs and resulting legislation

Following the adoption of the UNGPs in 2011, the U.N. Working Group on Business and Human Rights began working with States — and with multi-stakeholder groups at the country level — to adapt and implement the Guiding Principles around the world. This is known as Pillar 1 implementation. The plan was for States to develop National Action Plans (NAPs), in which they would identify legislative and regulatory changes that needed to happen in order to fully comply with the UNGPs.

To be sure, this process has been much slower than anticipated. By February 2023, only 31 countries had officially published a NAP and 25 others were taking steps in the right direction. Of the 31 countries with NAPs, the vast majority rely almost exclusively on voluntary approaches to compliance. Only a handful of countries — France, Nether-

²⁶⁶ "Declaración final del Foro alternativo 'Abusos de poder empresarial: la otra cara de la rendición de cuentas sobre empresas y derechos humanos,'" Mesa por los Derechos Humanos frente al Poder Empresarial, 19 July 2022, www.ciedhcolombia.org/_files/ugd/739426_963fb88f9e7947c5895bada3779fa567.pdf. Accessed February 1, 2024.

²⁶⁷ "¿Quiénes somos?," Mesa por los derechos humanos frente al poder empresarial, n.d., www.ciedhcolombia.org/mesaedh. Accessed February 1, 2024.

²⁶⁸ "Foro Preparatorio," Plataforma Latinoamericana de la Sociedad Civil sobre Derechos Humanos y Empresas, 2023.

²⁶⁹ "Declaración de OSC convocadas por la Plataforma Latinoamericana sobre Empresas y DDHH," 16 October 2023, <https://poderlatam.org/2023/10/declaracion-de-osc-convocadas-por-la-plataforma-latinoamericana-sobre-empresas-y-ddhh>.

lands, Norway, Germany, and Switzerland — have implemented into law even a portion of the UNGPs, all five of these being due diligence laws in compliance with Pillar 2 of the UNGPs. A dozen or so other countries and regions have passed parallel laws — or are in the process of debating them legislatively — on issues ranging from forced labor to supply chain due diligence.

Incidentally, some countries, such as Brazil, have already proposed business and human rights legislation even before adopting a NAP.²⁷⁰ Other countries in Latin America, for example Chile, Colombia, Mexico, and Peru, also have due diligence or similar laws pending in their legislatures.²⁷¹ In Africa, despite some on-going NAP processes in 10 countries, only two States have adopted NAPs, Kenya and Uganda.²⁷² Notably, the Kenyan Human Rights Commission has done important work pushing for better laws there as a result. And, in Asia, only four countries have adopted a NAP.

While States must consider all sectors and industries when developing a NAP, given the high likelihood of adverse impacts caused by extractive projects, countries rich in natural resources or with current operations from multinational extractive companies should specifically prioritize the extractive sector within the substantive framework of their NAP. In this regard, ICAR and the Due Process Law Foundation propose a checklist with the minimum elements needed to ensure that the human rights implications of the extractive industry are adequately considered in the process of developing, evaluating, or revising a NAP. This checklist includes resource allocation for the consultation of stakeholders affected by extractive operations, stakeholder mapping, addressing international and regional standards related to respecting human rights in the extractive industry, transparency of information about the NAP, and monitoring and reporting on its implementation.²⁷³

According to Conectas, “Guiding documents such as the United Nations Guiding Principles on Business and Human Rights, the UN Working Group on Business and Human Rights Recommendations, the Organization for Economic Cooperation and Development Guidelines for Multinational Enterprises and the Guidelines can be more explicit.

²⁷⁰ The “Projeto de Lei 572/22” creates a national framework for business and human rights, establishing guidelines for policies on the matter. This legislation seeks to impose obligations on businesses, such as submitting semiannual reports on actions for human rights and creating funds for the repair of victims of human rights violations. Businesses’ obligations could be prosecuted even extraterritorially. Presented in 2022, this legislation still awaits final approval. See: Zeca Ribeiro, “Projeto cria marco nacional sobre direitos humanos e empresas”, Câmara dos Deputados, 1 April 2022, www.camara.leg.br/noticias/861969-projeto-cria-marco-nacional-sobre-direitos-humanos-e-empresas.

²⁷¹ “Qué Formas Han Tomado las Regulaciones de Debida Diligencia,” Subsecretaría de Relaciones Económicas Internacionales, Chile, 1 August 2023, www.subrei.gob.cl/sala-de-prensa/noticias/detalle-noticias/2023/08/01/qu%C3%A9-formas-han-tomado-las-regulaciones-de-debida-diligencia.

²⁷² Scott Martin, “A Baseline Assessment on Business and Human Rights In Africa: From the First Decade to the Next,” UNDP Africa, 31 October 2022, www.undp.org/sites/g/files/zskgke326/files/2022-10/Baseline%20Assessment%20BHR%20Report%20EN%20-%20web.pdf.

²⁷³ Cindy Woods, Katherine Valencia, and Daniel Cerqueira, “Extractives and National Action Plans (NAPs) on Business and Human Rights,” ICAR/Due Process Law Foundation, December 2017, <https://icar.ngo/extractives-and-national-action-plans-naps-on-business-and-human-rights>.

We have already seen the exhaustion of self-regulation initiatives and voluntary practices, and these documents do not contain coercive obligations to identify corporate capture. Against this backdrop, a Human Rights and Business Treaty becomes an instrument that could encourage states to improve their legislation and public policies to protect human rights in the face of corporate power.”²⁷⁴

3.12.3 Due diligence laws

As mentioned in the previous section, five European countries have passed due diligence laws, effectively codifying into law Pillar 2 of the UNGPs. Another seven have adopted parallel laws on issues from forced labor to supply chains, and approximately five others have pending legislative proposals on due diligence, including several in Latin America. That said, across our interviews and literature review we encountered broad skepticism in the Global South about the implementation abroad and enforceability at home of European supply chain due diligence laws. The reasoning is twofold: if not adapted authentically to each country’s reality, they risk becoming yet another tool of neo-colonial imposition; also, it is often simply more effective to litigate cases of supply chain violations in the host country’s legal system in the Global South, partially obviating the need for extraterritorial assistance from a home country’s jurisdiction in the Global North.²⁷⁵

What follows are observations about the opportunities or strategies that might complement what is — at best — initially a patchwork system of somewhat mismatched laws and obligations, mostly between countries’ legal systems in the Global North and South:

- **What’s being regulated:** The five European due diligence laws currently on the books each conceive of and regulate supply chain activities and violations differently. The concept “vigilance” in one country may differ from “due diligence” in another, just as “supply chains” may not include all business activities, while “decent conditions” in a certain country might not have a direct equivalent in another jurisdiction. If this is already confusing between five relatively similar countries in the European Union, how can we expect this to be any easier when examining their supply chains abroad in over 200 other countries with vastly different legal systems? Similarly, what if a violation in one place, say France, is not a violation in another, say Mexico, because the home and host countries’ laws codify and regulate business conduct and human rights differently? To complicate matters further, can we expect a judge in the Global North jurisdiction to be an expert on the laws, regulations, norms, practices, and evidentiary standards of 200+ countries worldwide? In this regard, even if there is a case to be made of a due diligence law’s violation abroad, how can we be sure it’s in fact illegal or if a crime was even committed?

²⁷⁴ Conectas (Brazil), Interview questionnaire, 21 September 2023.

- **Mirror or sister legislation:** If supply chain due diligence is to be effective, home and host countries' legal systems must be able to speak each other's language. In the European example, countries in the Global South would need similar legislation that homogeneously criminalizes violations and reprehensible conduct in order to ensure successful prosecution and enforcement. Is this feasible? Or, is a deforestation law in the host country needed, for example, that would require supply chain monitoring, traceability, and transparency so as to ease the evidentiary burden of a due diligence suit brought in Europe? This would certainly make it easier to find corruption, theft, or illegal activity if we could detect it in the first place.²⁷⁶ In the food sector, for example, States closely monitor for contamination and can almost instantaneously respond to problems. If we can do this for human health reasons, can we not adapt to do the same for forestry products, forced labor claims, and other supply chain issues?

While the current situation finds European countries passing due diligence legislation and considering how it applies to the Global South, there is a significant portion of international commerce that does not flow vertically, as it were, but rather horizontally. South African companies source products from Namibia. Mexico from Guatemala. China from Bangladesh. And so on. This South-South dynamic, with its country-specific and regional variations, must also be considered as Global South countries ponder mirror or sister legislation.

- **Human rights outcomes:** Do due diligence laws in fact ensure human rights outcomes? If a legal or perhaps legally unclear practice in a host country is deemed illegal in a home country in Europe, might the repercussions — loss of business, unemployment, reprisals, etc. — for the rightsholder actually be worse than the “illegal” practice under European law? The deeper issue is whether the implementation of these due diligence laws will prioritize human rights outcomes for the rightsholder above all else?

Albeit in a different field, the human rights in housing organization The Shift, based in Canada, has proposed “the first-ever comprehensive framework providing governments and investors with guidance to effectively address the financialization of housing in accordance with human rights law,” known as The Shift Directives.²⁷⁷ In the due diligence context, do European judges have a similar framework that prioritizes human rights outcomes? The Shift recommends additional tools, such as ombudsperson offices and human rights impact assessments, to ensure that human rights outcomes are prioritized in any sectoral approach.²⁷⁸ Otherwise, we risk replacing one harm with another.

²⁷⁵ Alejandra Ancheita, Executive Director, ProDESC, Interview on 29 August 2023.

²⁷⁶ Mary Beth Gallagher, Head of Engagement, Domini, Interview on 31 August 2023.

²⁷⁷ “The Shift Directives,” The Shift, n.d., <https://make-the-shift.org/directives>.

Despite the skepticism, some actors see a way forward to make supply chain due diligence work, as follows:

Congo

With the cobalt boom still relatively nascent, there is an opportunity to disrupt this cycle [which places negative impacts at the beginning of the supply chain, while corporations and consumers disproportionately benefit from the advantages of greener technology,] and intentionally design a system that includes benefits-sharing throughout the supply chain. This will require thoughtful and proactive engagement on the part of a range of actors — including end-user companies — to ensure that the operations associated with their cobalt supply are conducted in consultation with and with the consent of host communities and local government authorities. (...)

Companies that use cobalt for “green technologies” should also develop programs to bring these technologies to the very communities that make their creation possible, and to mitigate or prevent the damages brought by extractives. Given the particular risks posed to individuals and organizations in Congo that seek to expose corrupt practices by both the government and multinational companies, additional resources should be allocated for the protection of these whistleblowers. (...)

Conduct thorough and consistent due diligence and public reporting, with attention to corruption-related risks. In addition to end-users, all companies along the cobalt supply chain, including producers in Congo, should conduct due diligence in accordance with the Organization for Economic Cooperation and Development (OECD) due diligence guidance and publish Step 5 reports that detail their risk-based due diligence approach. (...)

Collectively, through relevant industry associations, visit cobalt mine sites to ensure compliance and reinforce their prioritization of transparency and anticorruption initiatives. (...)

Use supply chain leverage to increase contract and subcontract transparency. This includes: obtaining and publishing the legal and beneficial ownership structures of the mining companies from which they source cobalt, including all joint venture partners; requiring producers and suppliers to publish all cobalt and copper production contracts they have entered into in Congo; requiring all producers of cobalt to identify all contrac-

²⁷⁸ As Special Rapporteur, Leilani Farha influenced Canada to adopt legislation to recognize housing as a human right: the National Housing Strategy Act, with a basis in international law. Alongside that legislation, she helped create a Federal Housing Advocate and a National Housing Council in Canada. The latter is responsible for ensuring that the Federal Housing Advocate gets a handle on experiences and patterns that could violate the right to housing. For example, the Advocate decided to have a review panel on the financialization of housing. The Shift submitted the underlying document to the panel. The Housing Minister must respond in Parliament to the recommendations that will arise from this panel. Her innovation was inspired in the Special Rapporteurship; essentially, she reverse-engineered her post to recreate its functions at the federal level in Canada. Her goal is for this to become a quasi-judicial body. She's unaware of another country doing something similar. See: Leilani Farha, Executive Director, The Shift (Canada), Interview on 14 September 2023.

tors and subcontractors that provide services in excess of a reasonable threshold (e.g. \$100,000) to the producer; and requiring disclosure of payments to governments.²⁷⁹

South Africa

“South Africa needs due diligence supply chain laws because it is a semi-imperial country that is extracting resources from other countries. But, at the moment, the country is not having this discussion. It is not happening at the policy level and there is no analysis at the civil society level.”²⁸⁰

Brazil

“In the same direction, it is urgent that the national due diligence laws being discussed also provide obligations and responsibilities for the financial sector, including the banks, investment funds, investors, and brokers.”²⁸¹

Mexico

“The Justice Commission of the European Union decision on [the Corporate Sustainability Due Diligence Directive (CSDDD)] will be important to implement. However, it must be implemented in accordance with communities in the Global South in a truly collaborative, not extractive, way. This could have a great impact and detonate other mechanisms, such as strategic research, damage prevention, etc. Joint liability or joint liability between subsidiaries is also an element to add and use. This makes North-South collaboration stronger and avoids the inequality gap regarding access to rights and resources. These legal opportunities provide a lot, especially from a transnational perspective. However, what does not yet work about due diligence laws is that they’re unknown in the South; there is no training to use them and little socialization about how to prevent projects rather than react to them. This problem lies with CSOs, especially in the Global South.”²⁸²

However, since its proposal by the European Commission in 2022, approval has been delayed by European authorities, especially by the German government, which, as of January 2024, openly lobbied against it. The directive would require approval by a vote from a group of governments representing 65 percent of the European Union's population. Additionally, it would need approval from the European Parliament and subsequent transposition into national law by member states.²⁸³

²⁷⁹ Annie Callaway, “Powering Down Corruption. Tackling Transparency and Human Rights Risks from Congo's Cobalt Mines to Global Supply Chains,” Enough: The Project to End Genocide and Crimes Against Humanity, October 2018, https://enoughproject.org/wp-content/uploads/PoweringDownCorruption_Enough_Oct2018-web.pdf.

²⁸⁰ Representative of the management team, Centre for Applied Legal Studies (CALs) (South Africa), Interview on 21 September 2023.

²⁸¹ Conectas (Brazil), Interview questionnaire, 21 September 2023.

²⁸² Alejandra Ancheita, Executive Director, ProDESC, Interview on 29 August 2023.

²⁸³ Simon Mundy, “Landmark EU legislation hangs in the balance”, Financial Times, 14 February 2024, www.ft.com/content/05bf9f3d-90db-4aed-b925-b8664529cda5.

3.12.4 Remedy mechanisms

Pillar 3 of the UNGPs — arguably the most important to corporate accountability advocates, affected communities, and rightsholders — “stipulates that when a right is violated, victims must have access to effective remedies which are legitimate, accessible, predictable, equitable, transparent and rights compatible.” These provisions for improved accountability and access to remedy have been the subject of much advocacy by CSOs and also a point of significant debate and resistance by States and certainly companies, which, among other concerns, fear new liability for corporate-sponsored crimes and other violations.

According to the organization Shift, “Even where states and business do their best to implement the Guiding Principles, negative human rights impacts may still result from a company’s operations. Therefore, affected people need to be able to seek redress through effective judicial and non-judicial grievance mechanisms. The third pillar of the Guiding Principles sets out such mechanisms can be strengthened by both states and businesses:

- As part of their duty to protect, states must take appropriate steps to ensure that when abuses occur, victims have access to effective judicial and non-judicial state-based grievance mechanisms;
- Non-state-based grievance mechanisms should complement state-based mechanisms. This includes mechanisms at the operational level (meaning that companies are involved in implementing them), at a national level, or as part of multistakeholder initiatives or international institutions;
- All non-judicial grievance mechanisms should meet key effectiveness criteria by being legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and (in the case of operational-level mechanisms) based on dialogue and engagement.”²⁸⁴

To date, none of the remedy mechanisms that have emanated from the UNGPs reference or tackle corporate capture directly. However, some of them address the mechanisms used to practice capture or the impacts of capture on people and planet. What follows are observations, opportunities, and innovations to improve remedy mechanisms that came from our interviews and literature review:

- **Fines are wholly insufficient:** Every person we consulted for this horizon scan was emphatic that fines do not constitute an effective remedy nor meaningful accountability for corporate-sponsored violations. They do not make affected people or

²⁸⁴ “Pillar 3: Access To Remedy,” Shift, n.d., <https://shiftproject.org/resources/ungps101/pillar-3-of-ungp-remedy>.

parties whole and, given the deep pockets, insurance policies, hedges, and other strategies that companies employ to internalize and manage these costs, they often cause no more than a dent in the corporate armor. However, paying economic compensation for damages, both to direct and diffuse victims (such as consumers), is the State's responsibility, whether the government itself provides the compensation or a court orders a company to do so.

- Contributions and direct links:** When States and companies recognize corporate responsibility for human rights violations, which is not something they admit to regularly, it is usually for cases of direct causality, often proven in a court of law. However, other modes of indirect or partial causality, such as contributions (the company has leverage to affect change) and direct linkages (its operations, products, or services stemming from a business relationship), are frequently denied or ignored, and thus justice is denied.²⁸⁵ According to Paloma Muñoz of BSR, “The problem is that within the space of accountability, business, and human rights (cause, contribution, and direct links), the big difference between the last two is that if one violates human rights one has to make reparation, which is not happening. The world of business and human rights traditionally has a simplistic analysis when analyzing these factors. The company allows violation by action or omission.”²⁸⁶
- Strengthening enforcement and inspection mechanisms:** Within the realm of causality, part of the difficulty in establishing corporate responsibility for contributions or direct links to human rights violations is because States do not have the capabilities to effectively inspect, investigate, prosecute, and enforce legal responsibility. Many would argue that this is because the corporate capture of the State has led to de-funding and de-prioritizing these functions. According to Conectas, “In addition to transparency, one of the biggest advances would be for companies to be held legally and effectively responsible for violations or damage throughout their entire value chain, i.e. both the supply chain and the product's after-sales service. This accountability should cover every supplier in the chain, avoiding outsourcing and fourth-party outsourcing processes aimed solely at reducing costs and evading responsibility for violations and damages. But for this accountability to be possible, it is necessary to strengthen state bodies and mechanisms of control, inspection and evaluation and guarantee that the instruments of a complaint are accessible — whether at the public or private level — including through autonomy in the formulation of complaints (non-dependence) and the guarantee of the reversal of the burden of proof.”²⁸⁷

²⁸⁵ “Seven Questions to Help Determine When a Company Should Remedy Human Rights Harm under the UNGPs,” BSR, January 2021, www.bsr.org/reports/Seven_Questions_to_Help_Determine_When_a_Company_Should_Remediate_Human_Rights_Harm_under_the_UNGPs.pdf.

²⁸⁶ Paloma Muñoz, BSR, Interview on 25 August 2023.

²⁸⁷ Conectas (Brazil), Interview questionnaire, 21 September 2023.

- **Companies must invest in handling grievances:** Traditionally, companies have invested in corporate philanthropy and social responsibility initiatives — which are usually tax deductible — rather than on responsibly handling grievances or violations caused directly or indirectly by them. At most, companies invest in a combination of lawyers and public relations specialists to address these issues in post facto crisis mode, essentially missing opportunities to both prevent problems and meaningfully resolve them. However, Pillar 3 recommends more than creating complaint hotlines or voluntary participation in multi-stakeholder initiatives; the recommendation is to invest in prevention and grievance handling by building internal capacity to receive and investigate grievances, engage with rightsholders and their representatives, and proactively facilitate access to justice (instead of creating obstacles).²⁸⁸

A good example of this is the Cross-company Grievance Mechanism (UBM) of the German Automotive Industry in Mexico, which will be piloted in 2024-25. Following the adoption of a NAP in Germany in 2016, the Government began to promote sectoral dialogues for areas with particular human rights risks and Mexico was chosen to pilot this multi-stakeholder process. Coordination mechanisms, expert panels, and multi-stakeholder groups in both Germany and Mexico will receive and investigate complaints, recommend remedies within the voluntary framework of the UBM, and respect State and judicial intervention when and wherever possible. To achieve this, several large automakers in Germany have invested in internal grievance mechanisms within each company in addition to the cross-company UBM.

- **Worker-driven social responsibility (WSR):** Arguably the most promising innovation in terms of remedy is the WSR model. According to the Worker-driven Social Responsibility Network, “WSR provides a proven new form of power for previously powerless workers to protect and enforce their own rights. These rights can include – according to the circumstances and priorities of the workers driving the program – the right to freedom of association, the right to a safe and healthy work environment (including the right to work free from sexual harassment and sexual violence), and the right to work free of forced labor or violence, among other fundamental rights. The WSR paradigm is founded on the understanding that, in order to achieve meaningful and lasting improvements, human rights protections in corporate supply chains must be worker-driven, enforcement-focused, and based on legally binding commitments that assign responsibility for improving working conditions to the global corporations at the top of those supply chains.” The key elements of WSR are:
 - “Worker organizations must be the driving force in the creation, monitoring, and enforcement of programs designed to improve their wages and working conditions;

²⁸⁸ Mary Beth Gallagher, Head of Engagement, Domini, Interview on 31 August 2023.

- Brands and retailers must sign legally binding agreements with worker organizations, and those agreements must require the brands to provide financial support to their suppliers to help meet the labor standards established by the program, and to stop doing business with suppliers who violate those standards;
- Monitoring and enforcement mechanisms must be designed to provide workers an effective voice in the protection of their own rights, including extensive worker education on their rights under the program, rigorous workplace inspections that are effectively independent of brand and retailer influence, public disclosure of the names and locations of participating brands and suppliers, and a complaint mechanism that ensures swift and effective action when workers identify abuses.”²⁸⁹

A great example of WSR is the organizing and advocacy work of the Coalition of Immokalee Workers in the U.S. and its creation of the Fair Food Program, which is a partnership between workers, growers, retailers, and consumers in the food supply chain. To date, the Program has resolved 4,000 worker complaints, uncovered 10,000 violations, served 80,000 workers, and 45,000,000 USD in premiums for workers.²⁹⁰

Another great example is Ulula, a company that uses technology and training to promote transparency in global supply chains and practical tools for workers and communities to improve social, labor and human rights impacts. While not a member of the Worker-driven Social Responsibility Network, Ulula has a global reach, working in Africa, Asia, MENA, Europe, and Latin America. Some of its innovations include:

- Working with factories in supply chains to build business-worker associations with purchasing corporations. This worked in Vietnam and has been extended to Turkey, Bangladesh, and India. In these cases, grassroots organizations locate evidence of wrongdoing, train workers, and participate as ombudspersons with human resources and sustainability departments, which has been scalable and increases collective action.
- “[A digital complaints mechanism] is being piloted in Vietnam. (...) Developed by Ulula and amfori and powered by Ulula technology, Speak for Change is strengthening existing operational complaints mechanisms by being truly anonymous, available to more than just workers and accessible via user’s own mobile phones.”²⁹¹

²⁸⁹ “What is WSR?” Worker-driven Social Responsibility Network, n.d., <https://wsr-network.org/what-is-wsr>.

²⁹⁰ “Results,” Fair Food Program, n.d., <https://fairfoodprogram.org/results>.

²⁹¹ “Digital Complaints Mechanism Helps Vietnamese Workers Speak for Change to Improve Working Conditions”, Ulula, n.d., <https://ulula.com/resources/case-studies/grievance-mechanism-vietnam-speak-for-change-amfori>.

- “Kufatilia, an SMS-based incident reporting and monitoring tool for artisanal and small scale mining (ASM) communities, is a product of close cross-sector collaboration and support from local grassroots organizations. Developed with IPIS and initially launched in Eastern DRC, workers or communities in and around mine sites activate the platform by sending an SMS message of ‘Kufatilia’ (which means ‘to track’ in Swahili) to a local phone number. The system automatically deploys a survey for the informant to complete on their mobile phone. Through their survey responses, informants can report mine accidents, theft, corruption, fraud, child labor, environmental issues, and more. All incidents are funneled into Ulula platform’s case management system which local civil society organizations can access to review, address and track the resolution of incidents in a transparent and collaborative manner.”²⁹²

3.13 Tax reform

In many ways taxation — or the avoidance or lack thereof — is the opposite side of the same coin as the most common object of corporate capture: public contracts. As corporations and other private interests capture the State to secure favorable contracts, the private sector bleeds the public sector. We need not look further than the biggest scandals of our time — the Lava Jato bribery-for-contracting morasse that spread from Brazil throughout Latin America, or the Gupta family’s epic plunder of the Zuma Administration in South Africa — to observe how this undermines the common good. Similarly, corporations capture the State precisely to pay less — oftentimes nothing! — taxes, also draining public coffers. In the case of capture and procurement, corporations gain through government action; in the case of capture and taxation, they gain from inaction.

The field of tax reform — led by international organizations such as the OECD and CSOs such as Tax Justice Network — is rich with opportunities, recommendations, strategies, and innovations for how to eliminate tax avoidance, tax competition, and tax havens, which are prime objects of corporate capture, and increase taxation on the wealthy, as follows:

- **Maximum available resources for human rights:** Taxing the rich is generally a good way to raise public revenue. But is it enough? In progressive circles, increasing taxation and improving redistribution are considered insufficient; the objective is to decolonize the global tax system from a human rights perspective.²⁹³ According to the Center for Women’s Global Leadership, “Advocacy of higher taxes on businesses and well-off people is often dismissed as the politics of envy. We can

²⁹² “Ulula and Partners are Joint Winners in 2021 Stop Slavery Award for Kufatilia Project in DRC,” Ulula, 19 February 2021, <https://ulula.com/blog/mining-and-energy/ulula-and-partners-winners-2021-stop-slavery-award-for-kufatilia-project-in-drc>.

²⁹³ Mona Sabella, Coordinator, Corporate Accountability, ESCR-Net, Interview on 6 September 2023.

recast this advocacy as the politics of human rights and point to the obligations that governments have to raise revenue for realizing human rights. Framing tax reform in terms of human rights, as opposed to the private sector development that favors corporate interests, provides a new energizing discourse in which struggles for tax justice can take place. Tax policy should ideally be looked at together with expenditure policy so that we look at the relationship between the revenue and where it is spent. (...) Taxation is a critical part of complying with the principle of making use of maximum available resources (MAR). In light of this, we refer to tax ‘contributions’ rather than ‘burdens’ and ‘behavioral incentives/disincentives’ rather than ‘distortions.’ Poor administration of the tax system, such that it permits significant evasion and avoidance from wealthy persons and entities, should be understood as a failure to comply with human rights obligations. To conduct a human rights audit of taxation policy, we might choose to focus on the principles of maximum available resources; non-discrimination and equality; and transparency, participation and accountability. Taxation is appropriately audited in relation to obligations of conduct, as results in achieving particular levels of enjoyment of economic and social rights are more closely linked to expenditure.”²⁹⁴

- **Nuevo Pacto Fiscal:** Globally, one of the most important voices for tax reform is Magdalena Sepúlveda, the former Special Rapporteur on extreme poverty and human rights and currently the founding executive director of the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR). Over the past few years, Sepúlveda and colleagues at other CSOs, such as Oxfam and Tax Justice Network, have proposed a *Nuevo Pacto Fiscal* (or New Fiscal Agreement).

“[A] change in the international tax system is urgent. Multinationals — and the super-rich who control them — need to pay their fair share of taxes. While, on the one hand, many multinational companies take advantage of every opportunity to present themselves as allies of feminist causes, on the other, they have an army of lawyers and accountants manipulating the international tax system to avoid paying the taxes they are entitled to. Many times they manage to legally hide their profits in tax havens. This translates into \$200 billion annually in losses for developing countries. For this reason, at the Independent Commission for the Reform of International Corporate Taxation (ICRICT), an institution of which I am a part, we are convinced that facing the serious crisis of inequality, including gender inequality, requires reform of a significant part of the international tax system for large companies. And today there is a historic opportunity to do so.”²⁹⁵

²⁹⁴ Radhika Balakrishnan, Diane Elson, James Heintz, and Jonah Walters, “Auditing Economic Policy for Human Rights: A guide for activists and advocates,” Center for Women’s Global Leadership, Rutgers University, December 2019, www.escr-net.org/sites/default/files/attachments/aep_12101.pdf.

²⁹⁵ Magdalena Sepúlveda, “Igualdad de género y un nuevo pacto fiscal,” *La Razón*, 14 March 2020, www.la-razon.com/voces/2020/03/14/igualdad-de-genero-y-un-nuevo-pacto-fiscal.

Given its transformative potential, we repeat verbatim their proposal and recommendations:

- “This report recognizes the link between fiscal policy and international human rights obligations and uses this framework as a roadmap to address the fiscal and economic challenges facing the region.
- Concerned about the excessive levels of multinational corporate cross-border tax abuse, the OECD created the ‘Base Erosion and Profit Shifting’ (BEPS) initiative in 2013. In October 2021, 138 countries under the umbrella of the OECD’s ‘inclusive framework’ reached an international tax agreement, framed by various crises regarding its legitimacy and effectiveness, with the aim of curbing ‘race to the bottom’ competition where countries compete to attract investment by reducing their corporate tax bases. (...) The agreement consists of two pillars.
 - The First Pillar involves a limited reallocation of taxing rights on profits held by the world’s largest multinational companies (i.e., companies with annual global revenues exceeding 20 billion euros) in favor of market countries — i.e., countries where they sell their products or services.
 - The Second Pillar proposes a global minimum tax rate for multinational companies with global revenues exceeding 750 million euros to prevent profit shifting to low- or no-tax jurisdictions.
- The agreement has been widely criticized for being insufficiently inclusive and not reflecting the needs of low- and middle-income countries. In fact, by prioritizing ‘residence-based’ taxation over ‘source-based’ taxation, the agreement is designed to favor higher-income countries where multinational corporations are headquartered over those countries where their activities take place.
- There are two historic opportunities to make significant progress toward a new fiscal pact in Latin America and the Caribbean:
 - The first opportunity arose in November 2022, when the United Nations General Assembly approved a resolution recognizing the importance of strengthening international tax cooperation and called for inclusive, legitimate, and transparent intergovernmental discussions on a fiscal convention.
 - The second opportunity arises specifically in the region, following the announcement by the Government of Colombia in January 2023, to

convene the first Latin American and Caribbean Summit for Global, Inclusive, Sustainable, and Equitable Taxation, with Chile and Brazil as co-hosts. This initiative aims to bridge the political and technical dimensions and ensure that common agreements are evidence-based and involve civil society groups. Furthermore, it aims to establish common tax rules applicable to address the region's multiple crises. The Latin American fiscal initiative, led by Colombia, Chile, and Brazil, offers the possibility of laying the groundwork for a regional cooperation agenda that contributes to reducing inequalities that hinder the enjoyment of human rights across the region.

- Recommendations:
 - Cooperate to adopt constitutional and institutional frameworks on fiscal matters centered on fulfilling human rights. States must express in documents that their international taxation efforts aim to generate higher revenue to ensure human rights and just transitions (e.g., in energy). Fiscal policy decision-making should rely on relevant information and include the expertise and knowledge of feminist groups, people with disabilities, as well as indigenous and Afro-descendant communities. In this regard, states should involve not only their finance ministers in discussions but also offices responsible for human rights and environmental issues. Finally, they should commit to producing fiscal information cooperatively.
 - Taxation of wealth. Adopt a progressive fiscal cooperation agenda with the goal of realizing human rights and strengthening public trust in institutions. This agenda should prioritize measures to enhance states' capacities for wealthy individuals and multinational corporations to pay their fair share of taxes. Priority measures include the introduction of wealth taxes, combating financial secrecy, and making publicly available information more robust.
 - Explore alternative tax policy options that benefit the region more, such as an effectively coordinated minimum tax rate and a unified framework for digital services taxes (DSTs). The benefits of digital companies in the region should translate into a fair tax contribution to finance the provision of quality public services. To strengthen their bargaining power with digital economy corporations and design appropriate policy measures, regional states should adopt a common framework for setting DSTs. An alternative would be a global minimum effective tax rate (METR), a modified version of the original OECD proposal, where the collection of a global minimum tax is distributed among jurisdictions based on three factors: assets, employees, and sales.

- To address financial secrecy, an ambitious agenda has emerged, including international cooperation among tax authorities for the automatic exchange of banking information, national beneficial ownership registries, and the requirement for multinational corporations to submit country-by-country reports on their operations, assets, and profits.
 - A regional asset registry must adhere to two fundamental principles: First, the collected information must identify the ultimate beneficiary or beneficial owner (the actual individual who owns, controls, or benefits from the assets, regardless of whether they legally belong to another person, such as an accountant or a shell company), and second, national asset registries must be centralized, and data must be validated through cross-referencing with other government databases. After national registries are established, a regional network must be created to share this information and create a regional asset registry.
 - Implement fiscal policies related to extractive industries that jointly aim to mitigate climate change, reduce inequalities, and promote social and economic justice. Fiscal incentives can also be implemented to promote the development of renewable energy industries, upholding human rights. The coordination spaces between regional states that have opened up offer an opportunity to adopt a regional fiscal governance framework for the extractive industry sector that aligns with the demands of a just climate transition.
 - Latin American and Caribbean countries should engage jointly in opening negotiations at the UN, in alliance with other Global South blocs such as the African Union, and to adopt common positions that safeguard their interests. In this context, Latin American and Caribbean countries should unify their frameworks and voices to push for a United Nations Tax Convention.²⁹⁶
- **Windfall taxes:** These are a tax imposed by governments on certain industries when the current economic climate allows them to generate significantly higher-than-average profits. Since the Covid-19 Pandemic, unusually enormous profits have been registered in certain sectors and some States have sought to tax them more heavily. However, with few exceptions, these additional tax revenues have not gone to support the economic, social, and cultural rights of those affected by corporate practices. Among the handful of interviewees that were familiar with windfall taxes, to a person each of them recommended that they be tied to human rights outcomes.

²⁹⁶ "Unidos por un nuevo pacto fiscal. Construyendo una hoja de ruta para América Latina y el Caribe," Iniciativa por los Principios de Derechos Humanos en la Política Fiscal/Oxfam/Tax Justice Network/Global Initiative for Economic, Social and Cultural Rights (GI-ESCR), July 2023, <https://giescr.org/es/recursos/publicaciones/unidos-por-un-nuevo-pacto-fiscal>.

According to Oxfam, “There is a growing body of evidence that corporate profiteering is playing a significant role in supercharging inflation, echoing fears that corporations are exploiting the cost-of-living crisis to boost profits margins — a trend dubbed ‘greedflation’ and ‘excuseflation.’ (...) Analysis by Oxfam and ActionAid of Forbes’ ‘Global 2000’ ranking shows they made \$1.09 trillion in windfall profits in 2021 and \$1.1 trillion in 2022, with an 89 percent jump in total profits compared to average total profits in 2017-2020. For this analysis, windfall profits are defined as those exceeding average profits in 2017-2020 by more than ten percent. (...) Oxfam and ActionAid are calling on governments to claw back gains driven by profiteering. A tax of 50 to 90 percent on the windfall profits of 722 mega-corporations could generate between \$523 billion and \$941 billion both for 2021 and 2022. This is money that could be used to help people struggling with hunger, rising energy bills and poverty in rich countries, and to provide hundreds of billions of dollars to support countries in the Global South.”²⁹⁷

Oxfam recommends that governments:

- “Introduce one-off solidarity taxes on billionaires’ pandemic windfalls to fund support for people facing rising food and energy costs and a fair and sustainable recovery from COVID-19. Argentina adopted a one-off special levy dubbed the ‘millionaire’s tax’ and is now considering introducing a windfall tax on energy profits as well as a tax on undeclared assets held overseas to repay IMF debt. The super-rich have stashed nearly \$8 trillion in tax havens.
- End crisis profiteering by introducing a temporary excess profit tax of 90 percent to capture the windfall profits of big corporations across all industries. Oxfam estimated that such a tax on just 32 super-profitable multinational companies could have generated \$104 billion in revenue in 2020.
- Introduce permanent wealth taxes to rein in extreme wealth and monopoly power, as well as the outsized carbon emissions of the super-rich. An annual wealth tax on millionaires starting at just 2 percent, and 5 percent on billionaires, could generate \$2.52 trillion a year —enough to lift 2.3 billion people out of poverty, make enough vaccines for the world, and deliver universal healthcare and social protection for everyone living in low- and lower middle-income countries.”²⁹⁸

²⁹⁷ “Big business’ windfall profits rocket to ‘obscene’ \$1 trillion a year amid cost-of-living crisis; Oxfam and ActionAid renew call for windfall taxes,” Oxfam International, 6 July 2023, www.oxfam.org/en/press-releases/big-business-windfall-profits-rocket-obscene-1-trillion-year-amid-cost-living-crisis#:~:text=722%20mega%2Dcorporations%20raked%20in,tackle%20poverty%20and%20climate%20change.

²⁹⁸ “Pandemic creates new billionaire every 30 hours — now a million people could fall into extreme poverty at same rate in 2022,” Oxfam International, 23 May 2022, www.oxfam.org/en/press-releases/pandemic-creates-new-billionaire-every-30-hours-now-million-people-could-fall.

As for the profits of energy companies and extractive industries specifically, “Countries should impose windfall taxes on fossil fuel companies and divert the money to vulnerable nations suffering worsening losses from the climate crisis, the United Nations secretary general [António Guterres] has urged.” He recommends the following:

- “Those funds should be redirected in two ways – to countries suffering loss and damage caused by the climate crisis and to people struggling with rising food and energy prices.
 - That includes the banks, private equity, asset managers and other financial institutions that continue to invest and underwrite carbon pollution. ... And it includes the massive public relations machine raking in billions to shield the fossil fuel industry from scrutiny. Just as they did for the tobacco industry decades before, lobbyists and spin doctors have spewed harmful misinformation. Fossil fuel interests need to spend less time averting a PR disaster – and more time averting a planetary one.”²⁹⁹
- **Externalities:** Taxation should also focus on companies that produce externalities, such as those that contribute to the climate crisis or pesticide companies. The idea is to pay extra so that governments have specific funds for clean-up and remedy.³⁰⁰
 - **Eliminate the carried interest loophole:** “One of the most lucrative legal loopholes involves carried interest in the U.S. tax code. Wealthy Wall Street investment firms — such as private equity and hedge funds and their general partners — pay a lower percentage of taxes than school teachers or truck drivers. These firms charge limited partners high fees to manage their money but classify the fees received as ‘capital gains’ and not income, which allows them to pay a lower rate. By paying taxes on the profit from the sale of an investment, these firms and their general partners incur the capital gains tax rate of 20% instead of the ordinary income tax rate of 37% for [high-net-worth individuals]. Scholars estimate that the annual tax revenue lost from the carried interest loophole amounts to 18 billion USD.”³⁰¹
 - **REITs and housing taxes:** We must close the tax-free provisions for Real Estate Investment Trusts (REITs) worldwide. “As of 2020, REITs existed in nearly 40 countries. While they are framed as policy instruments for resolving the housing shortage or implementing development priorities, in practice, the asset management organizations that invest in them receive unprecedented freedom and tax benefits

²⁹⁹ Oliver Milman and Julian Borger, “Polluters must pay’: UN chief calls for windfall tax on fossil fuel companies,” *The Guardian*, 20 September 2022, www.theguardian.com/world/2022/sep/20/un-secretary-general-tax-fossil-fuel-companies-climate-crisis.

³⁰⁰ Sarojeni Rengam, Executive Director, Pesticide Action Network - Asia-Pacific, Interview on 7 September 2023.

³⁰¹ *Runaway Train: The Perilous and Pernicious Path of Private Capital Worldwide*. Empower. 2021. <https://empowerllc.net/en/issues/private-capital>. Pg. 179.

from this form of pooled capital.”³⁰² According to the Shift, we must also impose a small tax on the sale of residential properties over a certain percentage (targeted taxes), whose revenue should go to affordable housing, addressing homelessness, etc. Moreover, we should impose a vacant home tax whereby every property owner must fill out a form annually to declare if their property is inhabited. If uninhabited, the money would go to an affordable housing fund. In Barcelona, the local government took this one step further and can expropriate properties with 2+ years of vacancy and force them to rent to essential workers during the Pandemic, for example.³⁰³

- **Global tax policymaking:** Due to the corporate capture of the OECD — mostly through the revolving door between corporate executives and OECD staffers —, in particular the Committee on Fiscal Affairs and its business advisory groups, advocates may consider how to move the center of global tax policy to the U.N. Tax Committee, a space that is arguably more democratic and less captured (at least on this issue). Another idea is to consider a more prominent role for the U.N. Principles on Responsible Investment Tax Reference Group.³⁰⁴
- **Reform the Arm's Length Principle:** The arm's length principle is meant to ensure that companies with multiple entities in various jurisdictions are compliant with tax laws and do not unfairly benefit from transactions between affiliated entities. However, in the practice, corporate accountants and lawyers manipulate it to avoid double taxation. This guiding rule of global accounting allows companies to use transfer pricing to move profits from one jurisdiction, say in the Global South, to another in the Global North with a significantly lower tax burden.³⁰⁵

3.14 Anti-capture, anti-corruption reform

Across dozens of opportunities for concrete interventions to tackle the corporate capture of the State, arguably more ink has been dedicated to writing about how to reform public institutions than any other category. Similarly, the following ideas for how State institutions can address and stop corporate capture hold enormous potential for adaptability and scalability in other institutions, sectors, and geographies across the world. Moreover, the interoperability of different tools, strategies, and innovations — for example, beneficial ownership disclosures, public procurement regulation, and due diligence laws form a powerful triangle for advocates wherever they are — helps strengthen these reforms.³⁰⁶

³⁰² *Ibid.* Pg. 134.

³⁰³ Leilani Farha, Executive Director, The Shift (Canada), Interview on 14 September 2023.

³⁰⁴ Joseph Wilde-Ramsing, Advocacy Director, SOMO (Netherlands), Interview on 20 September 2023.

³⁰⁵ Joseph Wilde-Ramsing, Advocacy Director, SOMO (Netherlands), Interview on 20 September 2023.

³⁰⁶ Devi Pillay, Researcher, PARI, Interview on 4 September 2023.

Naturally, reforms to the object of capture — State institutions and the public decision-making that occurs within them — are a sensible place to focus. What follows are the most intriguing examples that emerged from our interviews and literature review:

- **Constitutional reform:** In 1996, South Africa — in an all-inclusive constitutive assembly that lasted for two years — completed drafting its new constitution, which is perhaps the most forward-thinking, human rights-inclusive, progressive constitution in the world today. With it, South Africa enshrined numerous economic, social, and cultural rights protections that are almost unheard of in other countries, such as the United States. Twenty years later, the country entered one of its most difficult periods in recent memory as the Zondo Commission began investigating widespread and grand corruption involving all levels of the State, including President Jacob Zuma (2009-18). In Chile, in 2021, following years of civil unrest and political turmoil, Gabriel Boric (2022-26) was elected to the presidency in a resounding victory. However, just a year later, his proposal for a progressive, sweeping constitutional reform was overwhelmingly rejected by voters. The lesson? Constitutional reform is both difficult to achieve and arguably more difficult to comply with. That said, it is the Holy Grail of institutional reform — the full weight of the rule of law to support your efforts.

According to Devi Pillay from PARI, “South Africa’s constitution is very visionary for socioeconomic and political rights. And it envisions what the State should be and for who it is supposed to serve. But fundamental structural problems continue and haven’t been able to change, save select cases where the Government has been forced to act, such as the Treatment Action Campaign, when civil society forced the Government to provide AIDS treatments. But this is an expensive route. If you are in a position of power, the constitution gives you the power to do that, but you still need people in government that actually want to make change happen.”³⁰⁷

- **Anti-State capture regulator:** In June 2022, when Justice Raymond Zondo handed the final report of the Zondo Commission to President Cyril Ramaphosa, he included numerous recommendations for administrative, electoral, institutional, and judicial reform in South Africa. Two of his recommendations — when taken together, albeit without explicitly saying so — effectively call for an anti-capture regulator to permanently investigate State capture allegations going forward. According to PARI, “Regarding oversight, the Commission proposed various reforms to be considered by Parliament, including the establishment of an oversight committee on the Presidency, the introduction of a constituency based electoral system, and various interventions to improve the effectiveness of oversight committees. ... The Commission recommended the establishment of a permanent commission to investigate, publicly expose acts of state capture and corruption in the way that this Commission did over the past four years, [and] make findings and recommendations

³⁰⁷ Devi Pillay, Researcher, PARI, Interview on 4 September 2023.

to the President.” In effect, one commission to oversee the presidency and another for State capture specifically would create an anti-State capture regulator. Over a year later, President Ramaphosa has not yet responded to these recommendations.

- **Stop Corporate Capture Act:** In the U.S. Congress, Representative Pramila Jaypal (D-Wash.), chair of the Congressional Progressive Caucus, introduced the Stop Corporate Capture Act (H.R. 6107) in December 2021. According to Public Citizen, “The Stop Corporate Capture Act includes a series of bold and aggressive structural reforms:
 - First, the legislation would ensure consumers, workers, and regular people get a seat at the rulemaking table by establishing an Office of the Public Advocate, which would be the voice of the public in the rulemaking process.
 - Second, the legislation would prevent corporations from misleading agencies or challenging agency science with bogus studies – a tactic repeatedly used by Big Tobacco, Big Oil, and others... The bill would require the disclosure of funding sources and any conflicts of interest connected to studies sent to agencies for consideration. In addition, agencies would be prohibited from considering studies that haven’t been peer reviewed and got 10% or more of their funding from regulated industries.
 - Third, the bill would remove loopholes and bottlenecks that corporations exploit to delay and block public protections. (...) For example, the bill would bring much-needed transparency and accountability to the U.S. Office of Information and Regulatory Affairs (OIRA) – the federal clearinghouse for regulatory activity – which historically has weakened and blocked new consumer, worker, and environmental protections in response to corporate lobbying.
 - Fourth, the legislation would stop the U.S. Supreme Court from overturning new regulatory protections based on fringe legal doctrines, as the court recently did when it prevented the government from protecting workers against COVID.
 - And finally, the bill would empower everyday Americans to bring citizen lawsuits holding government agencies accountable for failing to enforce the law when corporations get caught violating the rules.”³⁰⁸

³⁰⁸ David Rosen, “Bill to End Corporate Capture of the Regulatory Process Gains Support,” *Public Citizen News*, March/April 2022, www.citizen.org/news/bill-to-end-corporate-capture-of-the-regulatory-process-gains-support. Pg. 7.

- **Revolving door legislation:** In Mexico, in November 2019, the legislature approved one of President Andrés Manuel López Obrador’s (2018-24) priorities, the *Ley Federal de Austeridad Republicana*, which contains one of the most ambitious measures of his administration, the so-called Fourth Transformation: to “separate political power from economic power,” also known as regulating the revolving door phenomenon. “Although in Mexico, a good number of high officials have moved smoothly between the government and the private sector, the issue had not received special media or regulatory attention. This changed with the Federal Law of Republican Austerity, approved in November 2019, whose Article 24 states that public servants classified as senior management who leave their positions cannot work in companies they have supervised, regulated, or have privileged information about, for a period of 10 years.”³⁰⁹ Nevertheless, in April 2022, the Supreme Court of Mexico declared the 10-year cooling-off period unconstitutional, alleging a disproportionate violation of the right to freedom of work.³¹⁰
- **Anti-bribery laws:** Globally through the OECD Anti-Bribery Convention (1999) and nationally through numerous anti-bribery laws such as the U.S. Foreign Corrupt Practices Act (1977) and the UK Bribery Act (2011), companies are subject to liability for supplying public officials with payments to induce favorable treatment. In the Global South, a promising example for other countries is Brazil where, following the well-documented Lava Jato bribery scandal that spread like wildfire across Latin America, it passed the Clean Company Act in 2014. “[By] integrating key elements of the U.S. and U.K. anti-bribery legislation (e.g. extraterritorial jurisdiction), incorporating case resolution alternatives that have proven effective in the U.S. (and mimicked enthusiastically in the U.K.), and fostering cooperation, information-sharing, and other global anti-corruption trends, Brazil has created a successful template with which to maximize the enforcement capabilities of the authorities charged with carrying out the powerful mandate of the Clean Company Act.”³¹¹
- **Regulating corporate political engagement:** The OECD identified several lobbying-related risks and recommends the following:
 - **“Lobbying registers:** Voluntary or mandatory public registries in which lobbyists and/or public officials must disclose information on their interactions. Information disclosed may include the goal of the lobbying, its beneficiaries, and the targeted decisions.

³⁰⁹ César Morales Oyarvide, “Las puertas giratorias y la austeridad republicana,” *Este País*, 13 April 2020, <https://estepais.com/impreso/las-puertas-giratorias-y-la-austeridad-republicana>.

³¹⁰ “Comunicado de prensa No. 115/2022: La prohibición de laborar en el sector privado por 10 años después de ejercer el servicio público vulnera la libertad de trabajo,” Suprema Corte de Justicia de la Nación, 4 April 2022, www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=6835.

³¹¹ “Brazil’s Clean Company Act: How U.S., U.K., and Global Models May Influence Enforcement”, Trench, Rossi e Watanabe Advogados, 14 July 2014, www.bakermckenzie.com/-/media/files/insight/publications/2015/10/global-issue-spotting-for-automotive-parts/brazilcleancompanyact.pdf?la=en.

- **Open agendas:** A requirement for certain categories of public officials to publish their agendas online, including their meetings with external organisations and interest groups.
- **Legislative footprint:** A comprehensive public record of private parties' influence on a decision or regulation/piece of legislation. The information disclosed can be a table or a document listing the identity of stakeholders met, public officials involved, the object and outcome of their meetings, as well as an assessment of how the inputs received were factored into the final decision."³¹²

3.14.1 Judicial and litigation reform

- **The Office of the Public Protector:** In South Africa, this independent State institution charged with “investigating, rectifying and redressing any improper or prejudicial conduct in state affairs and resolving related disputes through mediation, conciliation, negotiation and other measures to ensure fair, responsive and accountable public sector decision-making and service delivery”³¹³ wrote the original “State of Capture” report in 2016 that led to the formation of the Zondo Commission.³¹⁴ It has the position and influence to be a really important anti-corruption force as well as a good model for Ombudspersons worldwide.³¹⁵
- **Multi-jurisdictional investigations and prosecutions:** (See earlier discussion about transnational collaboration among financial intelligence units.) Despite the inherent innovations in South Africa’s process to address State capture, a common lament of observers was the State’s inability — so far — to cooperate with other countries in order to pursue parallel investigations and prosecutions in the offshore jurisdictions from where the Gupta family practiced corporate capture. “Regulators and enforcement authorities from different countries are becoming more collaborative in their approach to fight bribery and corruption: the OECD Working Group on Bribery currently has 44 member parties. Corporations and their counsel should take note and be prepared for the possibility of an isolated investigation snowballing into a multi-jurisdictional matter. The possibility of facing multiple prosecutions and regulatory disclosures is very real.”³¹⁶

³¹² “Regulating Corporate Political Engagement. Trends, Challenges and the Role for Investors,” OECD, 2022, www.oecd-ilibrary.org/docserver/8c5615fe-en.pdf?expires=1697312870&id=id&accname=guest&checksum=A52107C7DB026D74F1782786F850FB3A.

³¹³ “Public Protector South Africa,” National Government of South Africa, n.d., <https://nationalgovernment.co.za/units/view/59/public-protector-south-africa#:~:text=The%20mission%20of%20the%20Public,mediation%2C%20conciliation%2C%20negotiation%20and%20other>.

³¹⁴ “State of Capture,” Public Protector of South Africa, 2016, www.pprotect.org/sites/default/files/legislation_report/State_Capture_14October2016.pdf.

³¹⁵ Devi Pillay, Researcher, PARI, Interview on 4 September 2023.

³¹⁶ Charles Hecker, “Large-scale Corporate Investigations: Multi-agency international investigations are here to stay,” Control Risks, n.d., www.controlrisks.com/campaigns/compliance-and-investigations/large-scale-corporate-investigations. Accessed February 1, 2024.

- **Criminal liability for the object of State capture:** One of the Zondo Commission’s key recommendations was to ask “the government to consider the creation of a statutory offence making it a criminal offence for any person vested with public power to intentionally use that power in any way other than ‘in good faith for a proper purpose’.”³¹⁷
- **Pretrial discovery laws:** As mentioned earlier, part of the black box problem is that we lack data, transactional evidence, and methodologies to identify, track, and measure capture. In the U.S. and most other common law countries, discovery laws exist so that attorneys can prepare the evidence ahead of a trial, effectively giving plaintiff and defendant the best opportunity possible to prepare their arguments, as well as more effective case management capabilities to the judge. The U.S. has the most favorable pretrial discovery laws, whereas virtually all civil law countries have no pretrial discovery, instead relying on lawyers and judges to produce evidence once a trial is underway. The Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (1983) is a multilateral treaty that provides for procedures to obtain evidence in foreign countries; however, its usefulness depends upon comity with equivalent institutions or laws in those countries. If we are to tackle capture, we must be able to prove our case in the court of law; without pretrial discovery, this process is exponentially harder.
- **Case law:** Multiple interviewees — Alejandra Ancheita, Miriam Saage-Maaß, Adriana Labardini, Conectas, CALS — mentioned the importance of using strategic litigation to establish new case law and jurisprudence as bulwarks and mechanisms to stop grand corruption and State capture. The following excerpt from our interview with PARI captures the common sentiment of these interviews: “A lot of the legal mobilization has been to take the government to court. That ended up with reforms to get the government to work and change. It was the fruit of successful civil society mobilization. Good examples include: Council for the Advancement of the South African Constitution, Freedom under Law, and the Helen Suzman Foundation. A lot of these pivotal cases ended with anti-corruption legal principles, which set an important precedent. One innovation is the principles that the anti-corruption units must have in the first place.”³¹⁸

The French organization Sherpa provides numerous proposals for holding corporations accountable, including:³¹⁹

- “Create and strengthen parent and instructing companies’ obligations and civil liability regime towards groups and supply chains;

³¹⁷ Devi Pillay, “The Zondo Commission: A bite-sized summary,” PARI, September 2022, <https://pari.org.za/wp-content/uploads/2022/09/PARI-Summary-The-Zondo-Commission-A-bite-sized-summary-v360.pdf>.

³¹⁸ Devi Pillay, Researcher, PARI, Interview on 4 September 2023.

³¹⁹ “Handbook of Proposals to Regulate Multinationals,” Sherpa, December 2021, www.asso-sherpa.org/handbook-of-proposals-to-regulate-multinationals.

- Facilitate the criminal liability of legal persons and strengthen the arsenal of penalties for human rights, environmental and ethical violations perpetrated by economic actors;
- Strengthen the obligations and liability of social and environmental auditors and the various financial, legal and fiscal intermediaries who facilitate the concealment of economic crimes committed by multinationals;
- Fight tax evasion by imposing ambitious public country-by-country reporting on multinationals and establishing public registers of beneficial owners of companies and trusts in an open format;
- Ensure the restitution of stolen assets through the establishment of a transparent and independent mechanism focused on identifying victims of corruption;
- Guarantee access to information of public interest held by multinationals and strengthen jurisdictional capacities;
- Regulate the practices of direct influence on public decision making such as lobbying and revolving doors;
- Define and provide a legal framework for the commercial and political communication of multinationals;
- Challenge the self-regulation of multinationals through ‘soft law’ and establish the supremacy of international public order over international economic order;
- Broadening the status and protection of whistleblowers;
- Fighting SLAPPs by amending procedural rules and strengthening sanctions against judicial practices that impede the exercise of freedom of expression.”

3.14.2 Commissions of public inquiry

As a standalone innovation, the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State in South Africa — otherwise known as the Zondo Commission — is a clear model for how countries can investigate allegations of capture. As an inquisitorial body, but one allowing for public participation and civil society input, a commission of public inquiry is a rare opportunity for the State to see inside itself. The South Africa case is not alone.

“The ‘Public Enquiry’ procedure is an official review of events or actions ordered by a government body. It is not present in Bulgaria, but exists in many common law countries, such as the UK, Ireland, Australia and Canada. A Public Inquiry accepts evidence and conducts its hearings in a public forum. Interested members of the public and organizations may not only make written evidential submissions, but also listen to oral evidence given by other parties. The conclusions of the inquiry are delivered in the form of a written report, given first to the government, and soon after published to the public. The report will generally make recommendations to improve the quality of government or management of public organizations in the future. In the Bulgarian case, such a new type of extended parliamentary enquiry could inform the public, legislators, experts, policy makers how to prevent cases of high importance, large scale and significant public expenditure.”³²⁰

Zondo Commission recommendations

What follows are the aspects of State capture that the Zondo Commission focused on, which can be adapted to other contexts:

- **Appointments to senior positions in the civil service:** The main problem that the Commission identified was that appointments were directed by the Guptas in order to secure public contracts, for example the chief executives of Eskom and Transnet. Some of this information was obtained through leaks, some from whistleblowers, and the rest from the Public Protector. In consequence, the Commission made extensive recommendations regarding senior appointments, including the creation of new mechanisms for appointing public servants. The core recommendation was to separate the powers — depoliticize — responsible for making appointments for senior positions. PARI also recommended several reform proposals to streamline the appointments process. Due to upcoming elections, President Ramaphosa has made some reforms in order to keep his promises to the Commission; however, new legislation is lacking.³²¹
- **Public procurement:** The Commission recommended the “publication of a national charter against corruption in procurement, with a binding code of conduct; the creation of an independent agency against corruption in procurement which includes a council, an inspectorate, a litigation unit, a tribunal and a court; the creation of a procurement officer professional body; and various other changes to public procurement legislation and regulations. The Commission also recommended enhancing transparency and strengthening protections for whistle-blowers.”³²²

³²⁰ Atanas Georgieva, Julian Popov, and Stefan Popov, “State Capture through Large Energy Infrastructure Projects. The Case of the South Stream Pipeline Project,” Risk Monitor Foundation, 2017, www.researchgate.net/publication/333035887_State_Capture_through_Large_Energy_Infrastructure_Projects. Pgs. 7, 29.

³²¹ Devi Pillay, Researcher, PARI, Interview on 4 September 2023.

³²² Devi Pillay, “The Zondo Commission: A bite-sized summary,” PARI, September 2022, <https://pari.org.za/wp-content/uploads/2022/09/PARI-Summary-The-Zondo-Commission-A-bite-sized-summary-v360.pdf>.

It did a “good job” laying out the exact mechanisms for procurement processes, which are broadly applicable. However, it did not separate the procurement and anti-corruption questions. Instead, the Government proposed a new Public Procurement Bill and a chief procurement officer, without creating an independent regulator or anti-corruption office.³²³

From CALS’s perspective as part of the Civil Society Working Group on State Capture, just within the past few months it has observed that the procurement laws are too extensive and, by extension, easily manipulable. For example, it is easy for a public official to declare an emergency and bypass the procurement laws, something which is ongoing in terms of procuring coal to manage the energy crisis.³²⁴

- **Oversight institutions:** As mentioned, the Commission proposed “various reforms to be considered by Parliament, including the establishment of an oversight committee on the Presidency, the introduction of a constituency based electoral system, and various interventions to improve the effectiveness of oversight committees.”³²⁵ There was a lot of support for whistleblower reforms; however, the proposed legislation did not go far enough, lacking security, support, or incentives for whistleblowers. Overall, many of the Commission’s proposals centered on the role of Parliament, primarily its constitutional obligation to hold the President accountable.³²⁶
- **Prosecutions:** “[T]hat various implicated individuals be investigated further and possibly prosecuted for their involvement in state capture, mostly concerning charges of fraud, corruption, money laundering, contravention of the Public Finance Management Act (PFMA), the Prevention and Combating of Corrupt Activities Act (PRECCA) and Prevention of Organised Crime Act (POCA), and racketeering.”
- **State-owned enterprises:** “[T]hat some SOEs and the National Prosecuting Authority’s (NPA) Asset Forfeiture Unit take steps to recover amounts paid to implicated parties as part of irregular and unlawful contracts. (...) [T]he establishment of a body tasked with the identification, recruitment and selection of SOE board members, Chief Executive Officers and Chief Financial Officers.”

According to Open Secrets, “The erosion of capacity, political will and morale at the NPA has become one of the most significant obstacles to accountability in South Africa. Even where other investigators and regulators in the state and civil society unearth evidence of criminality, these cases are transferred to the NPA and are not

³²³ Devi Pillay, Researcher, PARI, Interview on 4 September 2023.

³²⁴ Representative of the management team, Centre for Applied Legal Studies (CALs) (South Africa), Interview on 21 September 2023.

³²⁵ Devi Pillay, “The Zondo Commission: A bite-sized summary,” PARI, September 2022, <https://pari.org.za/wp-content/uploads/2022/09/PARI-Summary-The-Zondo-Commission-A-bite-sized-summary-v360.pdf>.

³²⁶ Devi Pillay, Researcher, PARI, Interview on 4 September 2023.

taken forward. It is imperative that all future leaders of the NPA are not only people of integrity, but more importantly that their appointment indicates commitment to an institution that will be shielded from political interference in the long term. Civil society should also demand a commitment from the NPA that it will pursue cases of economic crime from apartheid to the present day in a bid to tackle impunity.”³²⁷

- **Direct election of the President:** “[T]hat consideration be given to changing South Africa’s electoral system to allow for the President to be directly elected by the people.”³²⁸

3.15 Whistleblowing

For the purposes of this horizon scan, we define a whistleblower as “a person who exposes information that he or she reasonably believes, at the time of disclosure, to be true and to constitute a threat or harm to a specified public interest, such as a violation of national or international law, abuse of authority, waste, fraud, or harm to the environment, public health or public safety.”³²⁹ This person can be an insider — such as a worker or manager of a company, or a public official of the State — or an outsider — such as community stakeholders, journalists, commercial partners, etc. Indiscriminately, the same rights and protections should be afforded to anyone who blows the whistle and meets this definition.

“In order for companies to formulate appropriate human rights policies and conduct human rights due diligence, it is necessary for them to accurately identify whether human rights are being violated as a result of their business activities. Companies may conduct top-down internal investigations or audits for this purpose. However, investigators do not always have enough information to discover abuses, and organizational concealment of violations at the departmental level may cause investigators to miss relevant facts. Therefore, a bottom-up approach to human rights due diligence is essential as a supplement to the work of investigators; i.e., an approach in which the facts of human rights violations are detected as a result of whistleblowing by such third parties as the victims of human rights abuses or people who have witnessed the abuses.”³³⁰

Insofar as corporate capture is concerned, whistleblowers can play a critical role in revealing evidence of State capture, as seen in the leaks from South Africa that enabled the

³²⁷ “Corporations and Economic Crime Report. The Bankers,” Open Secrets, November 2018, www.opensecrets.org.za/what_we_do/investigations/cecr. Pg. 52.

³²⁸ Devi Pillay, “The Zondo Commission: A bite-sized summary,” PARI, September 2022, <https://pari.org.za/wp-content/uploads/2022/09/PARI-Summary-The-Zondo-Commission-A-bite-sized-summary-v360.pdf>.

³²⁹ David Kaye, “Promotion and protection of the right to freedom of opinion and expression,” Special Rapporteur on the promotion and the protection of the right to freedom of opinion and expression, 8 September 2015.

³³⁰ Masaki Iwasaki, “Whistleblowers as Defenders of Human Rights: The Whistleblower Protection Act in Japan,” *Business and Human Rights Journal* (2023), 8, pgs. 103–09, www.cambridge.org/core/services/aop-cambridge-core/content/view/FB7D9B9D38A13E0A639FD5A5AC888545/S2057019822000414a.pdf/whistleblowers_as_defenders_of_human_rights_the_whistleblower_protection_act_in_japan.pdf. Pg. 103.

Public Protector to write her original report, “State of Capture,” about the Gupta-Zuma scandal. What follows are examples of opportunities, strategies, and innovations from different countries that can be adapted and scaled to other sectors and geographies:

- Leaking platforms in Latin America:** In 2014, as part of an alliance with several media and civil society organizations in Mexico, PODER co-founded Méxicoleaks, the first anonymous and secure leaking platform in Latin America.³³¹ Subsequently, PODER co-founded or contributed to the emergence of five similar platforms throughout Central and South America.³³² In the aggregate, these platforms have received thousands of leaks over the past eight years, leading to hundreds of new articles, many of which were generated by corporate insiders blowing the whistle on corruption or corporate-sponsored human rights violations. The key component to these platforms is secure technology that guarantees a source’s anonymity.
- Platform to Protect Whistle-blowers in Africa (PPLAAF):** The *Plateforme de protection des lanceurs d’alerte en Afrique* is a Senegalese NGO founded in 2017 by lawyers, anti-corruption activists, and investigative journalists to support leaking and whistleblowers through legal strategies, funding, research, legislation, and technology. “When PPLAAF agrees to accompany a whistleblower in the disclosure of his or her information, it will analyze with the whistleblower the best course of action: either to inform his or her superiors, to give the information to competent authorities which are eager to prosecute, or to reveal the information to the public. (...) At each stage of disclosure, PPLAAF accompanies the whistleblower and, when necessary – in particular, when the whistleblower’s information is relevant for certain authorities – PPLAAF hires a lawyer to represent the whistleblower. (...) In the event of a public disclosure, and to best protect the whistleblower, PPLAAF may undertake to release the information directly after a thorough investigation. PPLAAF and the whistleblower may also decide to work with investigative media which will take responsibility for the publication. PPLAAF negotiates with journalists for the right to review passages that refer to the source of the information, which may provide identifying information about the whistleblower, to ensure that the identity of the whistleblower is not compromised if he or she wishes to remain anonymous.”³³³
- Corporate whistleblower protections in Australia:** “The reforms included in the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 are world leading in two respects, and set a new benchmark for whistleblower protection. First, legal protections now apply before a whistleblower starts to experience reprisals. Typically, action to protect whistleblowers is only taken after retribution

³³¹ Méxicoleaks, n.d., <https://mexicoleaks.mx>.

³³² LatamLeaks, n.d., www.latamleaks.lat.

³³³ “Second Activity Report 2017-2020,” The Platform to Protect Whistle-blowers in Africa (PPLAAF), September 2020, www.pplaaf.org.

has started. By the time compensation rights are triggered, the protections they offer are usually too little, too late. Now, all public and large proprietary companies are required to spell out how they will ‘support and protect’ those who speak up before they begin to experience any detrimental effects. This culture-changing step is crucial. Many companies are good at getting their employees to reveal wrongdoing. Their problem is knowing how to actually protect them when they do. Second, and backing this up, a company can now be held liable if it fails to prevent detrimental acts — by having no support plans in place, or neglecting to implement them, for example. Granting whistleblowers the right to sue for such a failure is a world first. The new rules for whistleblowing outside the company also set a new benchmark. Whistleblowers are protected if they choose to go to certain prescribed bodies rather than through internal company channels. And if they blow the whistle to a regulator and nothing happens within 90 days, or if there are emergency circumstances, it is now relatively simple for them to go public and still be protected.”³³⁴

- **Recommendations from the South African experience:** “The South African legal system offers protection to whistle-blowers through various pieces of legislation. The Protected Disclosures Act (Act No 26 of 2000) was developed specifically to protect employees who blow the whistle on malfeasance at their workplaces. However, commentators have criticised the act’s use of restrictive definitions to regulate who and what is protected. The definition of whistle-blower applies only to employee and employer relationships, providing no protection to third parties, who as a result may be discouraged from making disclosures. Once a whistle-blower protected by the act comes forward, any professional consequences or retaliation they experience are considered an offence. Consequently, the act imposes a number of obligations on employers to which protected disclosures are made, chief among which is requiring them to take all possible steps to protect whistle-blowers from retribution, victimisation or retaliation. These may include protecting the whistle-blower’s confidentiality or transferring them – with their consent – to other areas of the organisation. Moreover, employers are also required to implement and authorise appropriate internal procedures for receiving and dealing with information from whistle-blowers, and to ensure that these procedures are brought to the attention of all employees. Should an employee who has made a protected disclosure feel that their employer has not met these and other obligations, the act provides a number of remedies, including approaching either the Labour Court or the Commission for Conciliation, Mediation and Arbitration. The act makes provision for whistle-blowers who face occupational detriment to apply for the payment of compensation, the payment of actual damages suffered, and the remedy of occupational detriment suffered due to a protected disclosure. Conversely, should a whistle-blower not seek the payment of damages, they are also entitled

³³⁴ A.J. Brown, “Whistleblowing reforms in Australia show the way,” Transparency International - Australia, *Medium*, 22 February 2019, <https://voices.transparency.org/whistleblowing-reforms-in-australia-show-the-way-7c4e373ef660>.

to request and obtain a transfer on terms and conditions no less favourable than the conditions that applied immediately before the transfer. These provisions are reinforced by Section 159 of the Protection for Whistle-blowers Act, which provides whistle-blowers with both civil and criminal immunity for any disclosures they may make. Additionally, whistle-blowers can rely on the Witness Protection Act of 1998, which makes the disclosure of a whistle-blower's identity an offence. Nonetheless, a number of organisations have petitioned the South African government to reform whistle-blower protections, including legislation that would broaden the definition of a whistle-blower and provide specialised courts for whistleblowing cases."³³⁵

- **Recommendations from the Malaysian experience:** “[Establishing and implementing whistleblower protection] can only be achieved through the implementation of effective protection mechanisms not only before disclosure of pertinent information related to the illegal act in question but also during and after the disclosure. Additionally, appropriate measures ought to be taken to ensure that the bodies tasked with protecting whistleblowers are able to carry out their duties independently and without fear or favour. Whistleblower protection is integral to fostering transparency, promoting integrity, and detecting corruption, misconduct, and fraud both in the private and public sector. An effective whistleblower protection system supports and encourages businesses, individuals within an organisation, and members of the public to expose corrupt practices. This is fundamental to combating impunity that continues to allow corruption to fester. (...)”

The United Nations Convention against Corruption (UNCAC), to which Malaysia is party, requires all its signatory countries to put in place legal mechanisms meant to protect people who bring to light corruption and other related wrong-doing from retaliation. In affirming the importance of putting in place a comprehensive whistleblower protection system, Articles 13(2) and 33 of the UNCAC state: Article 13(2). Participation of society. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention. Article 33. Protection of reporting persons. Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.”³³⁶

³³⁵ Paulo Mateus, "Lessons from South Africa's State Capture Commission: the importance of whistle-blowers and their protection," Control Risks, 25 May 2021, www.controlrisks.com/our-thinking/insights/lessons-from-south-africas-state-capture-commission.

³³⁶ Fadiyah Nadwa Fikri, "Gaps in the Act: A Legal Analysis of Malaysia's Current Whistleblower Protection Laws," The Center to Combat Corruption and Cronyism (C4 Center), December 2021, <https://c4center.org/wp-content/uploads/C4-Center-Whistleblower-Protection-Report.pdf>.

3.16 Collective organizing

Most of the aforementioned sections in this chapter — from Philanthropy through Whistleblowing — depend at least partially upon philanthropic, State, or corporate actors for their implementation. However, the exclusive purview of civil society organizations and rightsholders are the following sections — Collective organizing through Opening civic spaces. These are the spaces where the collective strength of people power can mobilize against the corporate capture of the State.

Whether agrarian, community, labor, student, or other types of organizing, collective action as a precursor for further steps should be considered a requirement for transformational — versus episodic and transactional — change. The success of the following strategies — strategic litigation, popular tribunals, social movements, and opening civic spaces — depends upon the horizontal accountability mechanism of organized communities, consumers, farmers, voters, and workers, among other constituencies. This is our ultimate check on the power of economic and political elites.

Recent examples that come to mind include: the Indian farmers' protest (2020-21); the Black Lives Matter movement following the police killings of two unarmed Black men, Eric Garner and Michael Brown (2014); the United Auto Workers strike at automotive plants in part to insist on a just transition (2023); and the Sunrise Movement organizing for a Green New Deal in the U.S. (2014-20).

Though outside the scope of this horizon scan, examples of collective organizing include:

- Trade unions and collective bargaining, “provide a counterweight to captor elites and help to maintain equilibrium among the other key actors.”³³⁷
- Community organizing, of affected populations
- Agrarian organizing, of farmers, peasants, and communal landowners
- Transnational organizing, including within sectors and companies
- Consumer organizing, of affected people
- Pensionholder organizing, of those invested in corporations

³³⁷ Elizabeth David-Barrett, “State capture and inequality,” Pathfinders for Peaceful, Just and Inclusive Societies, December 2021, https://s42831.pcdn.co/wp-content/uploads/1662/65/cic_pathfinders_state_capture_inequality-2021.pdf. Pg. 17.

3.17 Strategic litigation

Regarding the climate crisis and energy transition, we discussed several opportunities in an earlier section to use strategic litigation to arrest climate change. In this section, we identify recommendations, opportunities, and strategies for corporate capture litigation in the Global South. Please bear in mind that none of these examples would be successful without the prerequisite of organizing in order to create a collective subject capable of acting as a horizontal accountability mechanism vis-a-vis the intellectual authors and beneficiaries of corporate capture.

- **Class action lawsuits:** According to DLA Piper, 39 countries worldwide permit a form of class action lawsuit, a civil action undertaken by a group or a representative of that group, typically for tort law claim.³³⁸ Class actions are important tools for communities affected by environmental damage, consumers affected by negligence, etc. Companies often fear class actions because the economic liabilities created by the size of the classes can lead quickly to multi-billion-dollar claims, if not higher. In addition to increasing the amount of countries that permit these actions, as well as expanding and strengthening the countries that already have them (albeit in a limited fashion compared to the leading standard in the U.S.), one recommendation is to improve the theory of damage and compensation for damages that can be won through these claims. In Mexico, for example, class action damages do not transfer to the affected class but rather to the State, which has full discretion for how to use these funds. In this regard, direct transfers — as with class actions in the U.S. — are necessary.³³⁹ Robust class action legislation plus direct transfers would be important tools against the effects of corporate capture.
- **Domestic litigation in the Global South:** Advocates, lawyers, and representatives of rightsholders in the Global South use laws already on the books in their countries to hold corporations accountable. CELS in Argentina. Conectas in Brazil. Socio-Economic Rights Institute of South Africa (SERI). Cajar in Colombia. PANAL in Asia Pacific. These organizations and many more are experts in their own legal systems. If anything, the opportunity to support their legal strategies and innovations would be a natural starting point in order to create anti-capture bulwarks across the world.³⁴⁰ For example, in an earlier discussion, we mentioned ProDESC in Mexico, which uses national legislation and litigation to win cases on their own terms — without necessarily suing in the Global North or relying on partners there to do so. If a case cannot be won domestically, then ProDESC can sue directly in a corporation's home

³³⁸ "Global Litigation Guide: Country insight," DLA Piper, n.d., www.dlapiperintelligence.com/litigation/insight/index.html?t=10-class-actions.

³³⁹ Adriana Labardini, Former anti-monopoly regulator for the Federal Telecommunications Institute of Mexico, Interview on 18 August 2023.

³⁴⁰ Sarojeni Rengam, Executive Director, Pesticide Action Network - Asia-Pacific, Interview on 7 September 2023.

country or enter into a genuine transnational partnership with an organization there with whom it can co-litigate.

- **Defense of land, territory, and natural resources:** Similarly, the use of agrarian law can be important for safeguarding the communal property of indigenous peoples, farmers, and rural landowners. Regulatory frameworks in the Global South, for example in Brazil, Mexico, and South Africa, offer promise insofar as they allow the use of free, prior, and informed consent (FPIC), agrarian law, and other human protections in a combined fashion to create legal bulwarks against corporate-sponsored human rights violations, which are often the negative effects of corporate capture. Using the example of ProDESC, currently it is litigating a land dispossession case in the Yucatan Peninsula using agrarian law as “prevention” against encroachment and expropriation, “defense” in cases of litigation, and “protection” against harms — not as “conservation” or “preservation” of territory.³⁴¹
- **South-South extraterritoriality:** CALS and several other organizations are involved in litigation in South Africa to hold a domestic mining company liable for the actions of its operations in Zambia — the case is known as the Children of Kabwe.³⁴² They did not seek to enforce Zambian law but rather the application of the South African constitution against a South African corporation, in this case the direct application of the bill of rights to private parties.³⁴³ This is one of many examples of extraterritorial protections and litigation possibilities that can happen using the constitutions and judicial systems already on the books in Global South countries.
- **Civil law — even when States won’t pursue criminal cases:** “As with most jurisdictions, in South Africa criminal prosecutions rely on the state to have the will and the capacity to proceed. When the state lacks either, or both, it is often perceived that the courts are closed. However, civil litigation can still be brought by any individual or group that can show harm. While there remains problems regarding access to the judicial system, there is still an opportunity to pursue accountability for corporations and individuals that commit economic crimes, or are complicit in other violations, even where the state won’t act. Civil proceedings have the great benefit of getting liable parties to pay back money illicitly gained.”³⁴⁴

³⁴¹ Alejandra Ancheita, Executive Director, ProDESC, Interview on 29 August 2023.

³⁴² “Mining in Kabwe,” Children of Kabwe, n.d., www.childrenofkabwe.com/mining-in-kabwe.

³⁴³ Representative of the management team, Centre for Applied Legal Studies (CALS) (South Africa), Interview on 21 September 2023.

³⁴⁴ “Corporations and Economic Crime Report. The Bankers,” Open Secrets, November 2018, www.opensecrets.org.za/what_we_do/investigations/cecr. Pg. 52.

3.18 Participatory research and popular tribunals

Historically, a popular tribunal was an opportunity whereby those excluded from the rule of law and judicial systems could participate in a parallel or shadow courtroom and, through an evidentiary process and judgment, render a verdict, often about crimes against the public interest. In civil society and social movements, popular tribunals are still used as a strategy to publicly communicate — and sometimes to name and shame — about a harm done to society, often by an elite or powerful actor perceived to be above the law. What follows are examples, not just of tribunals but also fact-finding missions and community-led human rights impact assessments, that could be replicated in other sectors and geographies to draw attention to the phenomenon of corporate capture,

- **People's Tribunal on Economic Crime (South Africa):** “An example is the People’s Tribunal on Economic Crime, the first public civil society-led tribunal of its kind dedicated to tackling corruption and economic crime. (...) Together, more than 25 individuals and civil society organisations told the country what they knew about these crimes and the impact felt as a result by ordinary South Africans. The Tribunal was a deliberate response to the failure of the state to fully investigate allegations of corruption and state capture. It provided a forum open to the public for explosive information and evidence related to economic crimes from apartheid to the present day.”³⁴⁵

“One way to deal with the state-led format of commissions has been to establish a parallel People’s Tribunal on Economic Crimes. This is a collaborative project between Corruption Watch, the Foundation for Human Rights, Open Secrets, the Public Affairs Research Institute and the Right2Know Campaign. The tribunal’s panel of legal and activist experts allowed members of the public to submit evidence on ‘economic crimes’ and released interim findings on the arms trade hearings early in February 2018. This report considered both apartheid-era and post-apartheid economic crimes involving sanctions-busting, arms deals and the later revelations about the state capture project in the late 2000s, linking them in a historical continuum.” (p. 146)³⁴⁶

- **Forest Fact-finding Missions in Asia Pacific:** The Forest Fact-finding Missions are participatory field research trips that glean information about the effects of forestry, agribusiness, pesticides, and the like on people and planet while creating opportunities to learn from and build power with affected communities. If the issues are

³⁴⁵ “Corporations and Economic Crime Report. The Bankers,” Open Secrets, November 2018, www.opensecrets.org.za/what_we_do/investigations/cecr. Pg. 49.

³⁴⁶ Luke Spiropoulos, “Civil Society in the Face of State Capture: Solidarity and Disharmony”, in Mbongiseni Buthelezi and Peter Vale (Eds.), *State Capture in South Africa. How and why it happened*, Wits University Press, 2023, <https://pari.org.za/new-book-state-capture-in-south-africa-how-and-why-it-happened>. Pgs. 130-50.

well-documented and the people well-organized, subsequent popular tribunals can be useful to bring these findings to a larger populace, using participatory research and public communication to pressure decision makers.³⁴⁷

- **Community-led human rights impact assessments:** As mentioned earlier, Oxfam’s COBHRA — which has been adapted by organizations throughout the world, such as PODER in Mexico — is a participatory tool to both assess human rights impacts and encourage companies to conduct due diligence that considers human rights risks, impacts, and the consent of affected communities. In PODER’s case, together with community organizations and rightsholders, it has used this tool on three occasions: to cancel an open-pit mine in the State of Puebla, to cancel an airport in the State of Mexico, and to fight against a toxic mining spill in the State of Sonora. In each case, the tool works best when communities mobilize and participate as field researchers to interview affected people, take soil and water samples, educate the community about human rights impacts, and so on. Regarding corporate capture, the COBHRA is most useful as a neutral communication tool that, based on corporate research into a project’s projected impacts — including power mapping and anti-corruption analyses of revolving door, bribery, and similar problems — can alert the community, public, company, its investors, and regulators about capture and prevent it from causing further harm.

3.19 Social movements

A driving force of social change, which often harnesses organizing strategies to grow and wield collective power, are social movements. In this report we have mentioned several of them, from the Indian farmers’ protests to the Rio Sonora Watershed Committees in Mexico, from Friday for Future to the Sunrise Movement and climate protests worldwide, and from Black Lives Matter to indigenous land rights’ movements globally. Across all of our interviews we were reminded to highlight the critical role and importance of social movements, particularly in the Global South. Unlike non-profit organizations or other legally-incorporated civil society groups, social movements often lack a legal structure, formal hierarchy, or fixed leadership. Instead, assemblies of delegates, rotating leadership positions, voluntary donations and in-kind support, and legal but unregulated activities characterize them. Sometimes, they are episodic, activist-driven initiatives and, other times, they are permanent, grassroots-led endeavors.

Regarding the corporate capture of the State, there are social movements worldwide that, while they may not be donor-driven, play a crucial role on the frontlines. These are true social movements — loose networks of people — that challenge corporate power and hold both themselves and society democratically accountable.³⁴⁸ In this

³⁴⁷ Sarojeni Rengam, Executive Director, Pesticide Action Network - Asia-Pacific, Interview on 7 September 2023.

regard, a few important opportunities that could be replicated or scaled to tackle and stop corporate capture include:

- **ESCR-Net's CAWG:** While the organization is a non-profit organization, the Network genuinely comprises individuals, organizations, and social movements, all of which play an integral role, including in the Corporate Accountability Working Group and the Corporate Capture Project. Regarding social movements, ESCR-Net states that “The Working Group of Social Movements and Grassroots Groups builds solidarity, facilitates mutual learning, deepens a shared analysis and builds global alliances around common challenges, goals and issues of collective interest, while promoting the active participation and leadership of grassroots leaders in all areas of the Network’s collective work.” The Network is certainly a concrete intervention worth supporting.
- **Integrating anti-corporate capture analysis with social movements:** There is an opportunity to make common cause between social movements, including those advocating for climate justice, and link their struggles to the fight against corporate capture. Conectas provides examples from Brazil, which could be replicated elsewhere. “[An] interesting opportunity is to collaborate with the efforts of Brazilian civil society and social movements to ensure that climate finance and taxation projects are inclusive and consider the perspectives of these movements. Increasingly, in Brazil, the demands for social justice are associated with climate justice, including the formulation of high-impact projects in which social movements influence financial policies, calling for greater transparency and accountability for economic agents. ... It is relevant to raise that organizations that are directly working on the ground, such as indigenous peoples and traditional communities (i.e. quilombolas) associations, must be included in these efforts. [Brazil's Indigenous People Articulation, APIB] and [Coordenação Nacional de Articulação de Quilombos, CONAQ], for instance, are very relevant in Brazil and are resisting strongly against negative corporate impact on social and environmental rights in Brazil.”³⁴⁹

Also in Brazil, the *Movimento dos Atingidos por Barragens* (Movement of those Affected by Dams, or MAB) has been actively supporting legislation and other efforts to reign in corporate power.³⁵⁰ According to Tchenna Maso, “In Brazil, we have been deeply affected by corporations. Our communities were strongly impacted by the privatisation of the electric sector, the increased role of private water firms such as Suez, and the building of dams by corporations. That is why [MAB] was created. Our focus on energy led to work on mining and struggle against giant mining firms such as Brazilian firm Vale and British-Australian BHP. They not only consume huge

³⁴⁸ Bobby Ramakant, Policy Director, Citizen News Service (India), Interview on 8 September 2023.

³⁴⁹ Conectas (Brazil), Interview questionnaire, 21 September 2023.

³⁵⁰ Mona Sabella, Coordinator, Corporate Accountability, ESCR-Net, Interview on 6 September 2023.

amounts of energy, they have also been responsible for terrible environmental disasters, such as the collapse of two dams storing toxic waste water in Mariana (2015) and Brumadinho (2019) which killed 270 people and displaced more than a million people. Similarly in my work with La Via Campesina, we are up against corporations such as Bayer and Monsanto. Corporations in Brazil shape everything — labour rights, public politics, poverty, access to land, even violence against women.”³⁵¹

A similar effort is underway in the Asia Pacific region. According to PANAL, “[It] has worked with groups focusing on energy transition as part of climate change. A lot of organizations do not work with the rural sector, so they have worked with peoples’ movements on the ground (peasants, farmers, plantation workers, indigenous population). They have been trying to build and mobilize movements to work in climate change, to bring them together to get solutions. The first and most important strategy is to organize the communities on the ground to build strong networks and movements of farmers and peasants. That is one of the most important aspects of the work.”³⁵²

- **Global People’s Summit on Food Systems (GPS):** “The [GPS] slammed the recently concluded U.N. Food Systems Summit for paving the way for greater control of big corporations over global food systems and misleading people through corporate-led false solutions to hunger and climate change. (...) The GPS culminated [in September 2021] with online and on-ground protests led by rural peoples in various countries across the Global South.”³⁵³
- **Anti-capture movement building in South Africa:** “The building of public knowledge and the deepening of widespread outrage surrounding state capture grew the support bases of civil society organisations, laying the groundwork for later efforts at ‘movement-building’. In turn, these efforts helped to provide a ‘home’ for dissenting voices within the [African National Congress] and created room for business leaders in anti-corruption efforts. ... Civil society mobilisation gradually gained momentum as the issue of state capture increasingly impacted the core work of several NGOs. The Social Justice Coalition – formed in 2009 to focus on localised socio-economic rights – became involved in anti-corruption campaigns because state capture undermined service delivery. (...) [Many] of the ‘professional’ NGOs, which had been ambivalent about becoming involved in the counter-state capture endeavours, were increasingly aware of their weaknesses in the face of

³⁵¹ “Fighting Vale and corporate capture in Brazil. Interview with Tchenna Maso,” Transnational Institute, 4 February 2020, www.tni.org/en/article/fighting-vale-and-corporate-capture-in-brazil.

³⁵² Sarojeni Rengam, Executive Director, Pesticide Action Network - Asia-Pacific, Interview on 7 September 2023.

³⁵³ “Big corporations steer UN Food Systems Summit; Global South pushes back,” PAN Asia Pacific, 25 September 2021, <https://panap.net/2021/09/big-corporations-steer-un-food-systems-summit-global-south-pushes-back>.

emerging popular and large-scale movements such as #FeesMustFall. As a result, many NGOs joined the anti-corruption efforts to be part of a broader movement.”³⁵⁴

- **The Global Campaign to Reclaim Peoples Sovereignty, Dismantle Corporate Power, and Stop Impunity:** “The [Global Campaign] is a network of over 250 social movements, [CSOs], trade unions and communities affected by the activities of Transnational Corporations (TNCs). These groups resist land grabs, extractive mining, exploitative wages and environmental destruction caused by TNCs globally but particularly in Africa, Asia, Europe and Latin America. (...) The Global Campaign is a peoples’ global structural response to unaccountable corporate power which provides facilitation for dialogue, strategizing, exchanging information and experiences, acting as a space for visibility of resistance and deepening of solidarity and support for struggles against TNCs.”³⁵⁵

The Campaign proposes an International Peoples Treaty, which provides a political framework to support the local, national, and international movements and communities in their resistances and practices of alternatives to corporate power and the TNCs’ model of the economy. It also participates in the campaign for the Binding Treaty. Its strategies include:

- **Permanent People’s Tribunal.** “The PPT was created to give visibility and qualify as rights all those situations in which the massive violation of fundamental rights are not met with recognition or institutional responses, whether they be at the national and international level. In three bi-regional sessions, the PPT heard denunciations on the human rights violations and environmental devastation by European TNCs in Latin America and the Caribbean.”
- **Counter-hegemonic networks:** “The Bi-regional Europe-Latin America and Caribbean Enlazando Alternativas Network was created in 2004 out of the need to intensify civil society resistance in Latin America and Europe to the ‘Europe Project’, the Lisboa agenda, transnational corporations based in the European Union and international ‘free’ trade and investment policies. Networks, social and trade union organizations and movements of the Bi-regional network coordinate around strategies to paralyze negotiations of FTAs between the EU and Latin America and the Caribbean, strengthen struggles against European TNCs and deepen the process of

³⁵⁴ Luke Spiropoulos, “Civil Society in the Face of State Capture: Solidarity and Disharmony”, in Mbongiseni Buthelezi and Peter Vale (Eds.), *State Capture in South Africa. How and why it happened*, Wits University Press, 2023, [h](#). Pgs. 130-50.

³⁵⁵ “Who We Are”, The Global Campaign to Reclaim Peoples Sovereignty, Dismantle Corporate Power and Stop Impunity, n.d., www.stopcorporateimpunity.org/list-of-signatories.

building alternative proposals for just, sustainable and complementary integration, based on solidarity and the interest of the peoples.”

- **Legal strategies:** “Official law is part of the hegemonic structure of domination and can only become a contra-hegemonic vehicle when it is subordinated to political action. However, legal interventions generate space for disputes and confrontation which can lead to popular victories in the long struggle against dominant classes and the capitalist system. The victims of these abuses and social movements must be the true protagonists in these conflicts.”
- **Boycotts:** “TNCs see boycotts as a threat that should be avoided at all cost. Companies react to boycotts in different ways, according to how they calculate the damage it could bring to their corporate image: with aggressive publicity campaigns, attempts to co-opt those behind the campaign and even threats to sue. Boycotts are not always effective. It is important to take into consideration that there are sectors, like the textile industry, in which boycotts have resulted in a given brand name laying off its workers, which is counter-productive to them, as instead of improving their working conditions, they make them worse. We need to seek alternatives that avoid producing this kind of negative consequences.”³⁵⁶

3.20 Opening civic spaces

Following the inaugurations of Recep Tayyip Erdoğan as president of Turkey in 2014, Donald Trump as president of the United States in 2017, Jair Bolsonaro as president of Brazil in 2019, and others, a shockwave reverberated throughout civil society as one authoritarian government after another came into power around the world. In fast succession, these authoritarian governments sought to limit the civic space for speech, debate, mobilization, and protest. While a challenging time to be sure, during this period CSOs and funders learned to creatively take advantage of holes in the authoritarian armor, both to open new civic spaces while also protecting the lives and livelihoods of those involved. In this sense, as a corporate accountability movement, we became attuned to situational opportunities where we could make hay with what was available. In many ways, the Green New Deal, climate strikes, the anti-corruption reckonings in Brazil and South Africa, the Indian farmers’ protests, and more all came about during times of authoritarian repression.

In what follows, we discuss situational opportunities identified through our interviews and literature review that advocates can harness to address and stop the corporate capture of the State:

³⁵⁶ “Why a Global Campaign?, The Global Campaign to Reclaim Peoples Sovereignty, Dismantle Corporate Power and Stop Impunity, n.d., www.stopcorporateimpunity.org/reasons.”

- **Political moments:** As mentioned, moments of political transition — prior to or following an election, during a change in ruling political party, following the inauguration of a leader to political office, during parliamentary elections, surrounding the membership conditionality of a country to join a political bloc, and so on — are unique opportunities to communicate publicly and utilize public attention to push back against corporate capture. In other words, these are particularly ripe moments when we can make corporate capture a political issue, perhaps even compelling politicians to address the issue in their campaign platforms or policies.³⁵⁷ The Gupta-Zuma scandal in South Africa, for example, in many ways hastened the end of the Zuma Administration and led to greater scrutiny of Ramaphosa's election as president, thus heightening the visibility of the Zondo Commission and the civil society advocacy that surrounded it.
- **Mass events:** Big events, such as mega-sporting events (MSEs), provide key opportunities to shine a spotlight on human rights protections and address structural issues in host countries, such as the corporate capture of the State. One such example was the FIFA World Cup 2022 in Qatar, where several organizations took advantage of the moment to increase worker rights protections. "The FIFPRO World Players' Union, Building and Wood Workers' International (BWI), International Domestic Workers Federation (IDWF) and Ulula are breaking ground at the FIFA World Cup with a digital platform designed to advance migrant worker's rights. This platform will facilitate access to information, training, and legal advice and support. The goal is to leave a legacy of improved worker's rights that outlasts the spectacle of the World Cup. (...) By acting as a buffer between the worker and the authorities, the platform will facilitate access to justice for migrant workers. The platform will help to identify patterns and collect data, formalise evidence, and promote awareness among the working population."³⁵⁸

Innovations such as Ulula's platform and others, including the BHRRC's Qatar World Cup Parallel Portal,³⁵⁹ are examples of how mass events provide opportunities for public communication and attention. An upcoming opportunity is the FIFA World Cup 2026 in Canada, Mexico, and the U.S. According to a report by Empower, "Regarding structural issues, the 2026 FWC could be used to bring about lasting changes in the affected communities, specifically in terms of human rights protections, job creation, and improved infrastructure. The event could also be leveraged to improve transparency in public and private procurement as well as to build human rights and sustainability into procurement processes. CSOs could use the

³⁵⁷ Maarten Lemstra, "The destructive effects of state capture in the Western Balkans. EU enlargement undermined," Clingendael: Netherlands Institute of International Relations, September 2020, www.clingendael.org/sites/default/files/2020-10/Policy_Brief_Undermining_EU_enlargement_2020.pdf.

³⁵⁸ "Digital Platform Will Leave a Lasting Legacy for Migrant Worker Rights at Mega Sporting Events", Ulula, 18 January 2023, <https://ulula.com/blog/migrant-worker/digital-platform-migrant-worker-rights-sports-qatar-fifa>.

³⁵⁹ www.business-humanrights.org/en/from-us/fifa-world-cup-qatar-2022-parallel-portal.

event to put pressure on local and national governments to make improvements to the law enforcement system, which in Mexico is often repressive. Finally, civil society could push for greater oversight of private security companies in line with the highest international standards.”³⁶⁰

3.21 Finance sector

The finance sector is the quintessential example of the corporate capture of the State. In the previous chapter we discussed how the capture of financial legislation, regulation, and enforcement — or the lack thereof — is the key mechanism through which capitalists and their allies in government have created so much wealth and harnessed enormous power. Despite enormous challenges, this sector is also rife with innovation by CSOs, entrepreneurs, and regulators who seek to establish a new economic paradigm for the common good. At the core of these efforts is how to center the consumers, rightsholders, and other stakeholders impacted by finance so as to make our economic system work better for them. Main Street in addition to Wall Street, as it were.

In Runaway Train we highlighted several innovations and recommendations worth noting. For a complete list of innovations and opportunities, including by civil society, scholars, policymakers, and financial mechanisms and tools, see Chapters V and VI:³⁶¹



We — corporate accountability advocates and the rightsholders, social movements, and CSOs that we accompany — are well positioned to drive the development of an evidence-based narrative about financialization and the harm caused by private capital to people and planet across key sectors and geographies, as well as mainstream alternatives and solutions. **A shared understanding of privatization, financialization, and private capital — including how this is occurring on our watch, where specific actors fit into the investment chain, and how they affect human rights and the environment — has the potential to spur urgent action among rightsholders, advocates, the media, and stakeholders.** Essential to this will be justifying the urgency and feasibility of solu-

³⁶⁰ “Human and Labor Rights in the 2026 FIFA World Cup: A Roadmap for Civil Society Engagement in Mexico,” Empower, November 2020.

³⁶¹ Runaway Train: The Perilous and Pernicious Path of Private Capital Worldwide. Empower. 2021. <https://empowerllc.net/en/issues/private-capital>.

tions to policymakers, regulators, institutional investors, and other stakeholders. **Ultimately we should track and expose private capital, hold its owners and investors to account, advocate for necessary legislative and regulatory changes, and build power among affected and interested stakeholders.**

As the world recovers from the pandemic there is an opportunity to advance this work through rights-based policies instituted during the economic recovery. We can enforce laws and close loopholes while leveraging emerging corporate disclosure requirements, due diligence guidelines, and developing movements across the world. There is a clamor at grassroots and policy levels — which has only grown louder during the pandemic — to address the role of private capital in surprise medical billing, predatory lending, housing evictions, deforestation, and fossil fuels. We're unlikely to get this opportunity again during our lifetimes.

Another opportunity is for cross-fertilization between movements and organizations, most of whom face or will face the effects of financialization on their work. For example, in 2020, climate justice campaigners made previously unimaginable gains by convincing large asset managers and insurance companies to ringfence or divest from coal and other fossil fuels. Those learnings can be applied horizontally to other movements campaigning against those same actors. Similarly, some pension funds have divested themselves of private prisons or harmful technology companies, while other advocates have targeted these same funds for their limited partnerships in private equity and hedge funds preying on single-family rental housing. Private capital is at once ubiquitous and pernicious and, from our unique vantage point as corporate accountability advocates, we can guide rightsholders, partners, and funders to efficiently use limited global resources and capacities as we learn from and collaborate with each other to rein it in.



Other examples of opportunities, strategies, and innovations include:

- Transnational collaboration among financial intelligence units:** Several interviewees noted that, during the Zondo Commission investigation in South Africa, the Government of South Africa lacked a lot of information about the financial transactions of the Gupta family's accounts and businesses in offshore jurisdictions and tax havens. The sense is that the Commission only uncovered the tip of the iceberg insofar as how the Guptas used the international banking and financial system to capture the South African State. One recommendation is to improve the transnational collaboration of financial intelligence units and prosecutorial authorities between onshore and offshore jurisdictions and tax havens. "Worldwide, almost all countries have set up Financial Intelligence Units (FIUs) to investigate suspicious financial transactions in the fight against crime and terrorism. FIUs need to collaborate with each other as these transactions often cross national borders. ... Lagerwaard concludes that the transnational collaboration between FIUs is made possible by the legal grey zone within which FIUs are able to operate fairly autonomously and independently. 'The combination of the relatively informal nature of international agreements and the relative autonomy of FIU operations enables FIUs to share information worldwide,' explains Lagerwaard."³⁶² Furthermore, investigative journalism can play a crucial role in providing significant information for addressing grand corruption and capture, especially in the early stages of investigations by public authorities. To harness the potentially valuable information from journalistic stories and activate formal legal processes, it is imperative to bridge the 'healthy distance' between journalists and law enforcement. This collaboration is essential to strengthen anti-corruption capacity (see the discussion on investigative journalism and transnational networks of journalists above)."³⁶³
- Lobbying reform:** The ambiguity of current legislation and enforcement leaves too much gray area where corporations can, in effect, capture the legislative process. We must establish guidelines for the financial sector on how it can interact with the State. For example, before, during, and after the legislative process, how does the financial sector — businesspeople, companies, investors, business associations, and lobbyists — operate in violation of human rights? For example, in Uganda, the private sector has supported legislators to pass legislation against the LGBTI community, which is blatantly corporate capture.³⁶⁴ Whether directly or indirectly, willfully or unknowingly, companies and investors contribute to legislative capture that impacts negatively on people and planet.

³⁶² Pieter Lagerwaard, "Following Illicit Finance across Distance and Difference: The Coordination and Practices of Financial Intelligence Units," University of Amsterdam, 2023, www.uva.nl/en/shared-content/faculteiten/en/faculteit-der-maatschappij-en-gedragswetenschappen/news/2023/03/how-financial-intelligence-units-collaborate-globally.html?cb.

³⁶³ Elizabeth Dávid-Barrett and Slobodan Tomić, "News never sleeps: When and how transnational investigative journalism complements law enforcement in the fight against global corruption," Serious Organised Crime and Anti-Corruption Evidence Research Programme, May 2022, <https://static1.squarespace.com/static/63e4aef3ae07ad445eed-03b5/t/6481bc4abdc18e26af648b08/1686223969960/news-never-sleeps-bn14.pdf>. Pgs. 5-7.

³⁶⁴ Paloma Muñoz, BSR, Interview on 25 August 2023.

- **Institutional investors and limited partners:** According to the Investor Alliance for Human Rights (IAHR), “By fueling the economy and businesses within it, shareholders pose risks to the broader interests of society in the same way portfolio companies might. In response, authoritative global standards such as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises have since 2011 established that all companies, including investors, have a responsibility to respect human rights throughout their operations and broader value chains. Investors also have fiduciary responsibilities for ensuring that portfolio companies respect human rights since where there are the most severe risks to people and planet, there are material risks to business, including reputational harm, financial loss, and legal liabilities.

A distinctive characteristic of institutional investors is that they may hold shares in a wide range of companies, across many sectors and different regions. This increases the risk that investors may be directly linked or contribute to a wide range of adverse human rights impacts. While investors are not responsible for providing remedy when only directly linked to human rights harms, they in all cases have a responsibility to: (1) develop and embed their own human rights policies, (2) assess and prioritize the most severe risks to people throughout the investment lifecycle, (3) build and use their leverage to influence investee companies to prevent, mitigate, and where appropriate address adverse impacts, (4) track outcomes, (5) disclose their policies and practices, (6) provide remedy when they have caused or contributed to abuses, and (7) engage with impacted stakeholders (meaning rights-holders, their credible representatives, and expert organizations) all along the way.

Investor leverage can be exercised in a number of ways, including through investment decision-making that factors in environmental, social, and governance (ESG) performance; positive and negative screens; engaging in company dialogues and multi-stakeholder platforms; filing shareholder proposals that seek to promote responsible business conduct and voting in favor of such proposals when put forth by other investors; and engaging government institutions and other standard-setting bodies on policies and standards that create enabling environments for responsible business conduct.”^{365, 366}

- **Improved oversight of dividends and share buybacks:** In many ways, the debate over dividends and share buybacks is one about short-termism versus long-termism, and about a shareholder economy versus a stakeholder economy. Should profits be returned to investors or reinvested in the company? Should the company buy back its own shares at a low price or instead reinvest its cash in practical value creation, ideally considering broader stakeholders beyond shareholders?

³⁶⁵ “Investor Respect for Human Rights and the Case for Stakeholder Primacy,” Investor Alliance for Human Rights, 28 August 2019, investorsforhumanrights.org/news/investor-respect-human-rights-and-case-stakeholder-primacy.

³⁶⁶ Paloma Muñoz, BSR, Interview on 25 August 2023.

According to Conectas, “There is a need to put pressure on governments to regulate practices such as the distribution of dividends and share buybacks and to ensure that profits are also shared for the benefit of society, either through compulsory taxes or pre-distributive mechanisms. Real and transparent accountability mechanisms should also be pushed for and encouraged, allowing shareholders to have control over and/or awareness of companies’ practices and the potential risks that their violations and damage can cause so that they can use their power of influence and their aversion to risk for responsible corporate behavior. (...) In addition, measures are important in the sense of (i) a mandatory and transparent approach to human rights due diligence; (ii) duties, responsibilities and fiduciary obligations for executives and directors that guarantee the pursuit of the general public interest; (iii) minimum rules for corporate remuneration and dividend distribution; and (iv) respect and dialogue with workers’ unions and labor confederations. These measures should be encouraged at a global or at least regional level. For countries in the Global South, with less strength to stand up to the pressures and influences of big business, such measures could represent something utopian or even dangerous (company flight and trade isolation) if they try to be imposed unilaterally.”³⁶⁷

In August 2022, U.S. Senator Elizabeth Warren (D-Mass.) and others included in the momentous Inflation Reduction Act — an omnibus climate and health bill — a 1% excise tax on share buybacks, effective 2023, which penalizes companies that return cash to investors to bolster their stock price. “Democrats say that instead of returning cash to shareholders, big companies should use the money to increase employees’ wages or invest in the business. They are hoping the excise tax — it’s projected to bring the government an additional \$74 billion in revenue over 10 years — will cause a major shift in corporate behavior. But some experts are skeptical that the tax will work as intended. They note that businesses have other methods for rewarding shareholders, raising the prospect that legislation aimed at halting one corporate stock practice could instead facilitate another, with new and unpredictable effects on the economy.”³⁶⁸

Globally, the trend has been to liberalize share buybacks through legislation.³⁶⁹ If anything, the opportunity for corporate accountability advocates is to push for excise taxes similar to those in the U.S. on countries worldwide.

- **Banking regulation:** Though banks in general make for easy fodder for transparency and accountability critics, one positive example offered by several interviewees

³⁶⁷ Conectas (Brazil), Interview questionnaire, 21 September 2023.

³⁶⁸ Marcy Gordon, “Companies facing 1st tax on stock buybacks in Biden bill,” *Associated Press*, 16 August 2022, <https://apnews.com/article/biden-elizabeth-warren-bernie-sanders-congress-5e5ea68a4b5c1f4f263f5516bcdf8f77>.

³⁶⁹ Alberto Manconi, Urs Peyer, and Theo Vermaelen, “Buybacks Around the World: Market Timing, Governance and Regulation,” European Corporate Governance Institute, Finance Working Paper N° 436/2014, August 2014, www.shareholderforum.com/wag/Library/20140800_Manconi-Peyer-Vermaelen.pdf.

wees was banking regulation in Chile, where the industry is highly regulated from an anti-monopoly perspective, ensuring sufficient competition. Banks in Chile are the exception, where economic concentration and wealth inequality prevail, and initiatives to further tax corporations and the rich have failed. “Starting with the crisis of 1982, in which the State assumed the cost of the debt, but at the same time, as a consequence, important regulation of the banking sector was achieved that has prevented more crises that have hit other countries.”³⁷⁰

According to the OECD, “In Chile, financial services are regulated and supervised by different institutions according to the type of financial service. The Superintendence of Banks and Financial Institutions (SBIF) and the Chilean Central Bank are in charge of banking, the Superintendence of Securities and Insurance (SVS) is in charge of securities and insurance, and the superintendence of Pensions (SP) supervises the pension system and unemployment insurance. The institutional arrangements regarding the resources and independence of some of the Superintendencies have been questioned in the past, although some authorities have recently been strengthened in certain areas. Chile applies strong banking secrecy provisions, but reforms are underway to allow international exchange of bank information for tax purposes.”³⁷¹

- **Independent and professional regulators:** Whether from a banking and financial perspective in terms of forensic accounting know-how, to technical and technological abilities to understand digital commerce and algorithms, regulators across the board are out-gunned and out-matched by the ability of the private sector to capture and drain the best talent. How can we expect anti-capture or anti-monopoly regulators to effectively regulate — and in real time — the abuses that they find if they don’t have the legislative tools, technical know-how, or resources to properly investigate violations.

From one perspective in South Africa, “Much of the corruption involving private sector professionals is a result of the state’s failure to establish a professional public administration. These professionals have not acted in a vacuum; they worked together with government officials for mutual benefit. A public administration that prevents patronage-based appointments, insulates officials from political interference and maintains high professional standards would be less vulnerable to exploitation. Such a public administration would not need to outsource key professional functions and would be better equipped to manage contracts with private sector professionals when it does need to hire them. Our state institutions [in South Africa] should be staffed by civil servants who are considered professionals with all the relevant stan-

³⁷⁰ Heraldo Muñoz, Former Foreign Minister of Chile, Interview on 28 July 2023.

³⁷¹ “Chile Review of the Financial System,” Organization for Economic Cooperation and Development, October 2011, retrieved 22 September 2023, www.oecd.org/finance/financial-markets/49497488.pdf.

dards and responsibilities highlighted in this chapter. The National Implementation Framework towards the Professionalisation of the Public Service, published for comment in 2021, could show a way forward if carefully implemented.”³⁷²

3.21.1 Regulating and holding economic service providers (ESPs) accountable

Within the finance sector, economic service providers or financial intermediaries deserve special mention. Throughout our interviews and literature review, the role of ESPs came up time and again. They were described as “shadowy middlemen,” the actors that “grease the wheels” of corporate capture, and even as the “architects” of capture. Though it would appear that the term “economic service provider” is more commonly used in discussions of capture in Africa and Asia, it is safe to say that one version or another of the phenomenon — how accountants, auditors, consultants, lawyers, and other economic and financial service providers act as conduits for the subject-object, supply-demand duality — is used worldwide.

In South Africa, ESPs were oft-cited during the Zondo Commission proceedings for their now well-documented role in carrying the water for the Gupta family vis-a-vis the Administration of President Jacob Zuma (2009-18). What follows are recommendations for their reform:³⁷³

- Services provided by ESPs should be based on ethics, through proper training of professionals and internal control systems of professional service companies.
- Professional associations, given their interest in maintaining the prestige of the profession, can play an important role in supervising professional best practices.
- Imposing sanctions can also be a mechanism to prevent State capture, ranging from fines to restitution (money return), expulsion of professional associations (through the withdrawal of certifications or credentials), and the imposition of criminal sanctions. These sanctions should apply to both companies and individuals.
- Since much of the corruption arises from relationships between private companies and politically connected officials involving intermediaries, practices such as the rotation of legal and auditing firms could prevent the formation of co-dependency relationships between companies and clients.
- A public administration is needed that prevents appointments based on patronage/clientelism, isolates officials from political interference, and maintains high professional standards to prevent State capture.

³⁷² Chereese Thakur and Devi Pillay, “How professionals enabled state capture”, in Mbongiseni Buthelezi and Peter Vale (Eds.), *State capture in South Africa. How and why it happened*, Wits University Press, 2023, <https://pari.org.za/new-book-state-capture-in-south-africa-how-and-why-it-happened>. Pgs. 109-29.

³⁷³ *Ibid.*

- Greater transparency regarding beneficial owners (public registers) and creating environments that encourage whistleblowers are needed.

The manifestations and impacts of ESPs seem endless — accountants, auditors, consultants, lawyers, and other “experts” facilitate the flow of money through global markets, causing disparities on an enormous scale. Herein lies the opportunity: we can track ESPs and monitor how they facilitate capture — for example, if they always give good marks as auditors, or if they are consistently hired to facilitate transactions between suspect actors — and hold them legally accountable, for example using anti-money laundering and other criminal laws. By following the money, we can identify vulnerabilities across the subject-object supply-demand duality and apply pressure.³⁷⁴

3.22 Climate crisis and energy transition

In the previous chapter we honed in on numerous challenges and gaps that the corporate capture of the State poses in the context of the climate crisis, all of which impact people and planet across cultural, economic, environmental, political, and social dimensions. Despite the enormity of these obstacles to progress, there is cause for hope. As advocates, communities, workers, human rights defenders, philanthropic organizations, and rightsholders, we have many opportunities before us to change our common trajectory and achieve an inclusive, green, just energy transition based on human rights principles and optimal standards for corporate transparency and accountability. In this section we discuss the opportunities, strategies, and innovations in both the Global North and South — including several with extraterritorial implications — that surfaced from our interviews and literature review, which, if implemented properly, would allow us to stop corporate capture of the renewable energy transition and forge a new economic paradigm.

Faced with the “corporate energy transition,” there are those who support and pursue an energy transition based on participatory and cooperative social and environmental justice. As articulated by the Transnational Institute and Taller Ecologista, “there is an urgent need to collectively build a peoples’ energy transition that is counter-hegemonic, based on respect for rights and socio-environmental justice.”³⁷⁵ It is imperative to profoundly transform existing power relations, addressing the anti-democratic character and limitless growth expansion inherent in neoliberal capitalism. “This view of a peoples’ energy transition is based on the premise of constructing the right to energy and questions the idea of energy as a commodity. It is based on the idea of de-privatization, of strengthening the diverse forms of the public sphere, participation and democracy. It is based on the imperative need to reduce energy use and, at the same time, to turn

³⁷⁴ Miriam Saage-Maaß, Legal Director, ECCHR, Interview on 28 August 2023.

³⁷⁵ “Towards A Corporate or A Peoples’ Energy Transition?,” Transnational Institute and Taller Ecologista, December 2019, www.tni.org/en/publication/towards-a-corporate-or-a-peoples-energy-transition. Pg. 3.

energy sources away from fossils. It is based on the struggle to eliminate energy poverty, and to decentralize and democratize decision-making processes around energy.”³⁷⁶ Such a process must be promoted and overseen by working-class sectors allied with organized social movements and civil society to ensure that new jobs created with the energy transition fully respect labor rights and guarantee a dignified life. It is also crucial to recognize women as central political subjects with a gender perspective.

3.22.1 Legislation and regulation

EU Critical Raw Materials Act (CRMA)

The CRMA was proposed in March 2023 by the president of the European Economic and Social Committee (ECOSOC), Ursula von der Leyen. It would establish the regulatory framework for the selection and implementation of strategic raw material projects in the EU Member States and a coordination mechanism for critical raw material supply chain monitoring, as well as adopt supply chain risk mitigation measures. While the Act presents an opportunity to legislate and regulate critical transition minerals and other raw materials more effectively, as proposed the CRMA leaves a lot to be desired.

According to a civil society opinion piece, “The CRMA should guarantee policy coherence and legal certainty through explicit reference to international due diligence standards set out in the UN Guiding Principles on Business & Human Rights (UNGPs), the OECD Guidelines for Multinational Enterprises and the upcoming Corporate Sustainability Due Diligence Directive (CSDDD) — and ensure they apply to all strategic project promoters in the CRMA.”³⁷⁷ Notwithstanding, as of January 2024, its approval had been continuously delayed by European policymakers, particularly by the German governing coalition concerned by the country’s sluggish economy.³⁷⁸

Other activists joined in the criticism: “‘The EU Commission is on a mining bonanza! It wants to give way to big, industrial mining across Europe and beyond,’ environmental organizations said after the European Parliament adopted its negotiating position on the [CRMA].”³⁷⁹

³⁷⁶ *Ibid.*

³⁷⁷ Olga Martin-Ortega, Caroline Avan, Johanna Sydow, Alejandro González, and Joseph Wilde-Ramsing, “Enabling a just energy transition: The crucial role of corporate accountability in the EU Critical Raw Materials Act,” Business & Human Rights Resource Centre, 12 September 2023, www.business-humanrights.org/en/blog/enabling-a-just-energy-transition-the-crucial-role-of-corporate-accountability-in-the-eu-critical-raw-materials-act.

³⁷⁸ Simon Mundy, “Landmark EU legislation hangs in the balance”, Financial Times, 14 February 2024, www.ft.com/content/05bf9f3d-90db-4aed-b925-b8664529cda5.

³⁷⁹ Mihajlo Vujasin, “Activists slam EU after vote on Critical Raw Materials Act,” *Balkan Green Energy News*, 17 September 2023, <https://balkangreenenergynews.com/activists-slam-eu-after-vote-on-critical-raw-materials-act>.

EU Deforestation-Free Regulation (EUDR)

The EUDR is an EU legislation, which entered into force in June 2023, with a global reach. Companies that import or export affected products into or out of the EU must conduct an in-depth investigation to ensure that the products are not sourced from land that has been deforested or damaged. They will also need to verify that the products comply with the relevant legislation of their country of origin, including human rights and the rights of affected peoples.

This law has already caused the governments of Indonesia and Malaysia, which account for 85% of the world's palm oil imports, to claim that the rules are too stringent for producers, especially small-scale farmers.³⁸⁰ It has also increased pressure on both countries to update their own biodiversity and deforestation laws in order to comply.

U.S. Inflation Reduction Act (IRA)

The 2022 IRA is the largest climate bill in U.S. history. It provides incentives, funding, and programs to accelerate the shift towards a clean energy economy and is expected to spur significant adoption of new clean electricity sources. The corporate capture concern regarding the Act is that it will provide billions of dollars in revenue to project developers in the form of direct tax credits, paired with major grants and low-interest loans established in the 2021 Bipartisan Infrastructure Law, essentially creating an unparalleled economic transfer from taxpayers and government revenue to private companies, many of which are oil, gas, and mining firms that contributed to the climate crisis.

At present, the IRA has led to massive construction of renewable energy facilities, as well as false solutions such as carbon capture and storage (CCS) projects, all spurred by tax incentives. The risk in all sectors and types of companies supporting the IRA is essentially political: changes to the White House and Congressional leadership could roll back, accelerate, or otherwise create unfair outcomes vis-a-vis the economic transfer of wealth that is occurring, ostensibly with even less transparency or oversight.³⁸¹

Tropical Deforestation-Free Procurement Act (New York)

In April 2023, a bill in the New York State Senate sought to enact “the New York tropical deforestation-free procurement act requiring that companies contracting with the state do not contribute to tropical primary forest degradation or deforestation directly or through their supply chains; [and] establishes the supply chain transparency assistance program to assist small and medium-sized businesses and minority- and women-owned businesses in achieving compliant supply chains.”³⁸² This unique subnational

³⁸⁰ Hans Nicholas Jong, “Palm oil giants Indonesia, Malaysia start talks with EU over deforestation rule,” *Mongabay*, 1 September 2023, <https://news.mongabay.com/2023/09/palm-oil-giants-indonesia-malaysia-start-talks-with-eu-over-deforestation-rule>.

³⁸¹ Mary Beth Gallagher, Head of Engagement, Domini, Interview on 31 August 2023.

³⁸² Senate Bill S4859A, NYS Senate, 16 February 2023, www.nysenate.gov/legislation/bills/2023/S4859/amendment/A#:~:text=Enacts%20the%20New%20York%20tropical%20deforestation%2Dfree%20procurement%20act%20requiring.to%20assist%20small%20and%20medium%2D.

legislation could become a model for other nations and jurisdictions. The collected data would furnish insights into the beneficiaries of deforestation, enabling us to resist the influence of business lobbies and corporate capture.³⁸³ Regrettably, in December 2023, the New York governor vetoed the legislation, which had passed with overwhelming bipartisan majorities in both houses of the Legislature. The bill enjoyed widespread support among businesses, indigenous peoples, and citizens globally. As said, the legislation aimed to establish New York State as a leader in protecting the world's critical tropical forests and largest carbon sinks. Nonetheless, there remains an opportunity to build a stronger coalition to pass the bill in the future.³⁸⁴

Rolling back deforestation in Brazil

With President Luiz Inácio Lula da Silva (2023-26) back in power, Brazil has committed to rolling back deforestation in the Amazon, which became exacerbated during the Bolsonaro Administration (2019-22). However, there is concern that Congress will not pass the no deforestation law due to corporate capture by agribusiness interests.

“In his first decisions as president, [Lula] restored the authority of the government’s environmental protection agency Ibama to combat illegal deforestation, which had been diluted by Bolsonaro. He also revoked a measure that encouraged illegal mining on protected Indigenous lands. In addition, he unfroze the billion-dollar Amazon fund financed by Norway and Germany to back sustainability projects, reinforcing his commitment to ending deforestation in the Amazon, which surged to a 15-year high under Bolsonaro. After his election victory, Lula pledged to reduce deforestation in the Amazon to zero.”³⁸⁵

Economic Transformation Plan (Brazil)

The Brazilian Government seeks to stimulate its economy and initiate the energy transition by establishing a carbon market with cap-and-trade for large emitters and safeguards for indigenous communities participating in carbon offset projects. Led by the

³⁸³ According to Friends of the Earth, “[The Act requires] state contractors who deal in tropical forest-risk commodities to certify that their products don’t drive tropical deforestation or degradation, by providing data to the state and the public demonstrating supply chain due diligence to their products’ points of origin; Closes loopholes in existing 30-year-old state law banning the use of tropical hardwoods for government projects; Provides a bidding preference for small and medium-sized businesses, minority-and-women-owned businesses, and businesses fulfilling state contracts using New York products; Creates a supply chain transparency assistance program to support New York-based small and medium-sized businesses and women and minority-owned enterprises to achieve ethical and sustainable supply chains for forest-risk products. This program will be administered by Empire State Development; Requires a minimum of two representatives from indigenous tropical communities within the geographic areas to be part of a Stakeholder Advisory Group; Defines ‘tropical forest-risk commodities’ to include soy, beef, palm oil, coffee, cocoa, wood pulp, paper and wood products. Other commodities may be added by the Commissioner of the Office of General Services.” See: “The New York Tropical Deforestation-Free Procurement Act Passes Assembly and Heads to Governor,” Friends of the Earth, 22 June 2023, <https://foe.org/news/new-york-deforestation-assembly>.

³⁸⁴ “Legislators, Advocates Respond to Gov. Hochul’s Veto of The New York Tropical Deforestation-Free Procurement Act,” Friends of the Earth, 23 December 2023, <https://foe.org/news/hochul-veto-ny-bill>.

³⁸⁵ Rosie Frost, “Brazil is back’: Lula takes over with plans to end deforestation and become a green superpower,” *Euronews*, 1 March 2023, www.euronews.com/green/2023/01/03/lula-tells-cop27-brazil-is-back-as-he-vows-to-end-deforestation-in-the-amazon.

Finance Ministry, the Plan will include around 100 measures across six policy domains, such as carbon trading, bioeconomy, and infrastructure adaptation, the issuance of government bonds tied to social and environmental initiatives, and gradually phasing out fossil fuel subsidies.

According to Conectas, "The opportunities emerging in the financial sector concern the initiatives that the current federal government is leading, such as the agenda of the Ministry of Finance's Ecological Transformation Plan. Although subject to criticism, this plan could be an opportunity for the economic and financial sectors to change their behavior and consider climate variables and the need for restructuring in the face of the energy transition."³⁸⁶

3.22.2 Litigation

Litigation funding

Litigation finance is when a third party, such as a hedge fund, invests in a lawsuit in return for a percentage of the lawsuit's proceeds. "It's a relatively new, multibillion-dollar industry where investors fund lawsuits. Here's the idea: say someone was wronged by a big corporation but has no money to sue it. A litigation funder will pay for their court battle. In essence: they're betting on the lawsuit the way traders bet on stocks. If it's successful – they make money, sometimes a lot of money; if it fails – the funders get nothing – their investment is lost."³⁸⁷

The question for advocates of the just transition is whether litigation funding provides an opportunity to sue at scale for climate crisis issues and harms that otherwise would be out of reach to most of us.

Conectas climate suit against the BNDES

"[The] first climate lawsuit against a national development bank in the world was recently filed by Conectas against the BNDES, demanding that the [State development] bank assess the impacts of its investments on the worsening climate crisis. Conectas filed in the Federal Courts of Brasília (Federal District) a lawsuit in which it calls on BNDESPar – the subsidiary of the BNDES (Brazilian Development Bank) responsible for managing the shareholder interests in companies held by the bank – to publish a plan to reduce greenhouse gas emissions that will guide its investments according to the targets of the Paris Agreement and the PNMC (National Policy on Climate Change). This is the first lawsuit of its kind against a development bank anywhere in the world. Although BNDESPar follows an Environmental and Social Policy for Operating in Capital

³⁸⁶ Conectas (Brazil), Interview questionnaire, 21 September 2023.

³⁸⁷ Lesley Stahl, "Litigation Funding: A multibillion-dollar industry for investments in lawsuits with little oversight," CBS News, 18 December 2022, www.cbsnews.com/news/litigation-funding-60-minutes-2022-12-18.

Markets, which bans support for companies with a track record of environmental crimes and modern-day slavery, this policy does not include climate criteria. The company also does not report the carbon emissions associated with its investment portfolio.”³⁸⁸

Portuguese suit in European Court of Human Rights

The largest-ever climate case considered by the European Court of Human Rights (ECHR) was filed in September 2020 and is directed against all 27 EU member states as well as the UK, Switzerland, Norway, Russia, and Turkey. The plaintiffs are six young people from Portugal, which was devastated by heat waves and wildfires, who claim that government inaction on climate change violates their human rights. In order to compel the defendants to take action, the Portuguese plaintiffs requested a legally-binding ruling through the assistance of UK-based Global Legal Action Network (GLAN). Although the ECHR dismissed the case in April 2024, in a landmark ruling it asserted that the Swiss government had violated the human rights of its citizens by not doing enough to stop climate change, which could encourage activists seeking to hold their governments accountable and influence decisions on similar cases in national courts.³⁸⁹

A similar case in Montana, United States, was decided in August 2014 when a state judge ruled that the state's policies that prohibit the consideration of climate change effects when reviewing coal mining, natural gas extraction, and other fossil fuel projects violate the young plaintiffs' rights.

Peruvian suit against RWE in Germany

“In 2015, a Peruvian farmer filed a letter of complaint against RWE, a Germany energy company, in a German court, alleging his home land is threatened by climate change caused by RWE. The plaintiff asks RWE to pay repair costs for his home, relative to the percentage RWE has contributed to global warming. RWE maintains [that] a single company cannot be held responsible for the consequences of climate change. ... In May 2022, judges and experts appointed by the court visited the Palcacocha Lake area in Peru to assess the risk and level of damage represented by the melting of the glaciers for the city of Huaraz. The case is ongoing.”³⁹⁰

3.22.3 Multi-stakeholder groups / partnerships / cooperation mechanisms

Extractive Industries Transparency Initiative (EITI)

Founded in 2003, EITI is a multi-stakeholder initiative that seeks “to promote understanding of natural resource management, strengthen public and corporate governance and

³⁸⁸ Conectas (Brazil), Interview questionnaire, 21 September 2023.

³⁸⁹ Isabella Kuwai and Emma Bubola, “In Landmark Climate Ruling, European Court Faults Switzerland,” The New York Times, 9 April 2024, <https://www.nytimes.com/2024/04/09/world/europe/climate-human-rights.html>.

³⁹⁰ “RWE lawsuit (re climate change),” BHRRRC, 24 November 2015, www.business-humanrights.org/en/latest-news/rwe-lawsuit-re-climate-change.

accountability, and provide the data to inform policymaking and multi-stakeholder dialogue in the extractive sector. ... [Currently,] more than 50 countries have agreed to a common set of rules governing what has to be disclosed and when – the EITI Standard.”³⁹¹

Insofar as corporate capture of the energy transition is concerned, EITI employs three strategies that provide key opportunities for improved transparency and accountability of the extractives sector — and arguably its adaptability and scalability to other sectors as well:

- **EITI Standard:** “The EITI Standard can play a role in building awareness of how the transition will affect extractive sector activities and revenues and in supporting the responsible and transparent production of minerals that are critical for a sustainable future. The EITI provides data that can help identify and close channels for corruption – not only in mining, oil and gas but increasingly in the renewables sector.”³⁹²
- **Project-level reporting:** “For [CSOs], project-level reporting will assist them and communities in their ability to hold companies to account, comparing payments to governments with actual activities and production at specific sites as well as fiscal, legal and contractual terms. Access to more granular data could also help in managing communities’ expectations, as less areas of company activities are opaque and therefore subject to speculation. Lastly, communities and CSOs have a real interest in understanding how companies operate in a specific location, and in comparing their activities to other similar projects in other parts of the country.”³⁹³
- **Beneficial ownership transparency:** See earlier discussion in this chapter.

Regarding EITI transparency in the energy transition, recommendations for how to accomplish this include:³⁹⁴

- “Make a high-level policy commitment to mainstreaming transparency on energy transition and climate risk through the next EITI Standard;
- Identify practical next steps towards the use of EITI data and disclosures;
- Enhance dialogue and coordination at national and international level;
- Act fast.”

³⁹¹ “Our Mission,” EITI, n.d., <https://eiti.org/our-mission>.

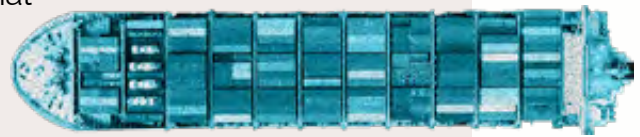
³⁹² “Our Mission,” EITI, n.d., <https://eiti.org/our-mission>.

³⁹³ Victor Ponsford, “Project level reporting – let’s get granular,” EITI, 8 March 2018, <https://eiti.org/blog-post/project-level-reporting-lets-get-granular>.

³⁹⁴ Siân Bradley, “Transparency in Transition: Climate Change, Energy Transition and the EITI,” Energy, Environment and Resources Programme, Chatham House, June 2020.

A specific case that underscores the opportunity to apply EITI to the energy transition involves the case of Congo's cobalt supply chains, as follows:

End-user companies can work to address inaccurate reporting and associated risks such as child labor by increasing visibility into their supply chain origins and also urging the Extractive Industries Transparency Initiative (EITI) multistakeholder group and the Congolese Ministry of Mines to integrate [artisanal or small-scale mining, ASM] reporting in Congo. Under the current EITI framework in Congo, exporting companies are not required to report on ASM material. Changing this requirement would help build documentation practices that could be refined to better identify and adjust for ASM minerals that are being incorrectly exported as [industrial or large-scale mining].



Public reporting on contracts between governments and industrial mining companies provides critical information for comparing budgets with actual expenditures, especially in relation to the provision of services to the population. It also helps illuminate when a country does not get a fair price for its minerals — something that can signal corrupt deals are occurring. While this transparency on its own does not guarantee responsible practices, it does provide critical information to local and international media, whistleblowers, and anticorruption organizations in Congo, and to the international community that can pressure companies and government officials to improve their practices.

End-user companies can use their supply chain leverage to encourage the publication of these mining contracts by requiring the mining companies they source from to publish all the cobalt production contracts they have entered into in Congo, including joint cobalt/copper contracts where applicable. The publication of contracts should also include beneficial ownership information in order to provide a complete picture of who is truly profiting. Part

of the reforms should also go through EITI implementation in Congo. The EITI multistakeholder group, which includes government, business, and civil society representatives, should require extractive industry companies in Congo to publish their contracts as part of EITI disclosure.



Recommend the EITI multistakeholder group and the Congolese mining ministry integrate ASM reporting into EITI reporting in Congo.³⁹⁵

U.N. Climate Change Conferences (UNFCCC)

The 198 members of the UNFCCC gather annually to assess progress and discuss international climate change measures at the Conference of the Parties (COP), which consists of delegates from each of the nations that have ratified the UNFCCC. The UNFCCC's overarching objective is evaluated by COP in relation to the consequences of climate change mitigation measures.

To date, the COP meetings have been characterized by the greenwashing practices of their hosts, participants, and sponsors, as well as their lukewarm climate targets and the financialization measures of their climate finance proposals. Notwithstanding, the COP meetings are an opportunity for multilateral, mostly voluntary cooperation and a large public forum where the corporate capture of the State could be addressed.

The following skeptical yet cautiously optimistic critique illustrates the COP process well:

For instance, big polluters and the fossil fuel industry are making use of carbon trading schemes to conceal the contradiction between climate pledges and business as usual practices. Carbon trading is based on turning carbon emissions into units that can be tracked and traded, which opens the door for greenwashing, particularly when corporations and governments can continue emitting CO₂ as long as they have the cash to buy carbon permits from those with excess carbon credits. (...)

³⁹⁵ Annie Callaway, "Powering Down Corruption. Tackling Transparency and Human Rights Risks from Congo's Cobalt Mines to Global Supply Chains," Enough: The Project to End Genocide and Crimes Against Humanity, October 2018, https://enoughproject.org/wp-content/uploads/PoweringDownCorruption_Enough_Oct2018-web.pdf. Pgs. 12, 14, 15, 22.

The fossil fuel multinationals have been relying on public relations and advertising campaigns to promote the claim that climate change is about individuals' lifestyle decisions and not the fault of the oil giants.

For example, BP — the second-largest non state-owned oil company in the world, with 18,700 gas and service stations worldwide — popularized the concept of the 'carbon footprint' when it launched, in 2004, 'the carbon footprint calculator' on its website as a way to help individuals understand how their normal daily activities cause global warming, obfuscating the fact that individual actions are fueled and powered by the fossil fuel industry. (...)



Industry players and governments have introduced 'green' hydrogen to help decarbonization efforts and accelerate the green transition. Hydrogen can be a clean energy source when produced by electrolysis using renewable energy. The North Africa region has plans to produce and export hydrogen to neighboring EU countries. However, the oil-producing states of Egypt and Algeria are manufacturing hydrogen from fossil fuel, using controversial CCS to trap emissions, known as 'blue' hydrogen. Blue hydrogen results in a huge carbon footprint and risks undermining the benefits of using hydrogen in the first place. Calculations suggest that the carbon footprint of blue hydrogen is 20% greater than that of burning natural gas or coal for heat, and 60% greater than burning diesel oil. (...)

Implementing the decisions taken at COP27 and reaffirming corporations and governments' commitment to limiting the global temperature rise to 1.5°C above pre-industrial levels will be a decisive milestone in navigating the path to fulfilling climate pledges in a way that moves us beyond years of inauthenticity and broken promises by big polluters.³⁹⁶



³⁹⁶ Zeina Moneer, "Greenwashing in a time of global warming," Middle East Institute, 13 December 2022, www.mei.edu/publications/greenwashing-time-global-warming.

Group of Twenty (G20)

The G20, established in 1999, comprises the finance ministers and central bank chiefs of the major industrialized and emerging economies, where they deliberate on global economic and financial matters. It plays a significant role in molding and reinforcing global architecture and governance on all major international economic issues.

Within the G20, an opportunity to advance the anti-capture agenda is through the Anti-Corruption Working Group, which endeavors to prevent corruption related to energy sustainability. “As the current G20 presidency draws to a close, it is likely that the usual anti-corruption commitments will emerge, including addressing the vulnerabilities associated with investment in the sustainable energy transition.”³⁹⁷

Recommendations for tackling corruption in the energy transition within the G20 include:

- **Data:** “There is little empirical evidence to date as to the nature and scale of corruption in the renewable energy sector. There is a real need for the G20 to invest in better understanding the drivers of corruption in the sector, develop evidence-based measures for mitigating these drivers, and generate case studies illustrating successes in combating bribery and corruption in this field.”
- **Transparency:** “The renewable energy sector is also closely intertwined with other sectors that have a high risk of corruption, such as the extractives industry and the mining of critical minerals. Here, there have been some important and welcome moves towards good governance and increased transparency. The [EITI] has developed international standards for transparency and accountability in the oil, gas and mining sectors. (...) While not all G20 countries are members of EITI, there are examples of how the Standards are being used by G20 countries in relation to the energy transition.”
- **Accountability:** “[Increased] data and transparency on corruption in the sector also serve an important purpose in allowing the public and civil society to hold governments to account. As already noted, there are significant challenges in ensuring that G20 countries deliver on the raft of anti-corruption commitments made to date. Making more information available publicly can only help drive the kind of changes needed. There are some notable examples in the G20 already, such as the launch by Argentina of an open information system (SIACAM), which provides public access to data on mining activity in the country, including the environmental and socio-economic impact.”

³⁹⁷ Kathryn Westmore, “Clean Energy: Tackling Corruption in the Transition to Net Zero,” The Royal United Service Institute for Defense and Security Studies (RUSI), 8 November 2022, <https://rusi.org/explore-our-research/publications/commentary/clean-energy-tackling-corruption-transition-net-zero>.

- **Lead by example:** “Finally, and maybe most importantly, G20 countries need to lead by example by building on the good practices already seen in some countries. They have a hugely important role to play, both domestically and internationally. G20 countries must demonstrate that they are pushing for higher international standards and that they themselves are meeting those standards – for example, in relation to beneficial ownership transparency, an essential element in the fight against corruption. G20 countries must also ensure that they vigorously investigate and prosecute cases of bribery and corruption, and that they have the necessary law enforcement resources to do so. In addition, the G20 should commit to building capacity in developing countries, particularly relating to the investigation of corruption and any subsequent asset recovery.”³⁹⁸

Community of Latin American and Caribbean States (CELAC)

CELAC, which comprises 46 member States, was established to contribute to the economic advancement of Latin America, organizing activities towards this end and building up economic ties among nations and with other parts of the world. In July 2023, at the CELAC-EU summit, both regions relaunched a partnership toward a just energy transition, including new agreements on climate finance, transition minerals, and hydrogen.

“Among [the solutions of various global problems], the challenges of the energy transition within the wider framework of the European Green Deal and energy diversification efforts are two essential elements for a renewed EU-LAC partnership. Such a partnership should evolve – from the traditional flow of European investment in the Latin American extractive export-oriented sector towards a much more complex relation that integrates investment in renewables, green industrial value chains and climate cooperation. (...) The EU-LAC partnership finds in energy cooperation a space for updating and strengthening relations that transcends the traditional dynamics of the fossil system. The success of European investment in renewables provides grounds for optimism regarding a future of increased bi-regional energy cooperation, which, besides consolidating traditional cooperation on renewables, could be extended to hydrogen, industrial decarbonisation and mining. (...) Latin America and Europe are two broadly compatible regions that must deepen their relations on the road to a just energy transition in the wider context of the European Green Deal.”³⁹⁹

The former foreign minister of Chile, Heraldo Muñoz, told Empower that: “An agreement was recently signed within the framework of the European Union with CELAC countries creating a global investment fund of 25 billion euros for the green transition and

³⁹⁸ Kathryn Westmore, “Clean Energy: Tackling Corruption in the Transition to Net Zero,” The Royal United Service Institute for Defense and Security Studies (RUSI), 8 November 2022, <https://rusi.org/explore-our-research/publications/commentary/clean-energy-tackling-corruption-transition-net-zero>.

³⁹⁹ Ignacio Urbasos, “Picking up the threads,” *International Politics and Society*, 17 July 2023, www.ips-journal.eu/topics/economy-and-ecology/picking-up-the-threads-6850.

non-renewable energies. This can help a lot to strengthen the idea and acceptance of SOEs (51% or more participation) to boost lithium production and point towards much-needed industrialization. It is important that the State participates in the economy because it will be concerned about having better conditions, jobs, and leaving more resources and dividends in the countries that produce raw materials. Companies are primarily interested in maximizing profits. Today there is more debate than before in this regard.”⁴⁰⁰

EU Just Energy Transition Partnerships

In the area of climate finance, just energy transition partnerships (JETPs) — launched at COP26 in Glasgow — are intended to channel money from wealthier to poorer countries in order to wean them from coal and other fossil fuels. They are “multilateral funding agreements — supported by the International Partners Group (IPG) composed of the European Union, the UK, the U.S., Japan, Germany, France, Italy, Canada, Denmark and Norway — to help emerging economies secure a just transition towards low carbon energy sources, with equity considerations at their core.”^{401, 402}

The JETPs come on the heels of much older strategic resource partnerships, which Germany and South Africa have maintained for decades. Both are opportunities for collaboration and conditionality, for example between trade unions in both countries; however, greenwashing threatens their legitimacy.⁴⁰³ Legislation such as Germany’s supply chain due diligence law, which excludes projects that do not comply with regulatory conditions — such as critical minerals for batteries whose mining uses forced labor —, are likely to slow the implementation of JETPs and strategic partnerships going forward.

3.22.4 Voluntary corporate compliance

Across a range of initiatives, such as alliances, working groups, codes of conduct, multi-stakeholder groups, and the like, companies make voluntary commitments to comply with norms or standards beyond what the law may require. In effect, the corporate social responsibility movement of the 1990s, which has morphed into the business and human rights, net zero, and sustainability moment of the present, largely features voluntary initiatives and compliance (versus legally-binding, obligatory measures).

Despite their voluntary nature, there are dozens — if not hundreds — of examples worldwide of companies that have been investigated and found to have violated their volun-

⁴⁰⁰ Herald Muñoz, Former Foreign Minister of Chile, Interview on 28 July 2023.

⁴⁰¹ “Five Facts to Know: Just Energy Transition Partnerships,” Edelman Global Advisory, 10 May 2023, www.edelman-globaladvisory.com/insights/five-facts-know-just-energy-transition-partnerships.

⁴⁰² Katherine Kramer, “Just Energy Transition Partnerships: An opportunity to leapfrog from coal to clean energy,” IISD, 7 December 2022, www.iisd.org/articles/insight/just-energy-transition-partnerships.

⁴⁰³ Miriam Saage-Maaß, Legal Director, ECCHR, Interview on 28 August 2023.

tary commitments regarding climate, corruption, and human rights, among others. What follows are just two of many such examples, which, in their aggregate, present opportunities for change if properly monitored and implemented so as to avoid greenwashing, etc.

BlackRock⁴⁰⁴

In January [2022], Larry Fink, the CEO of BlackRock, released a statement touting the need for corporations to address climate change. Yet BlackRock, the world's largest asset manager, has nearly \$600 million invested in palm oil, making it the largest U.S. investor in this unsustainable industry. Palm oil companies have a long and well-documented history of destroying rainforests, clearing and burning carbon-rich peatlands, abusing workers and displacing indigenous communities — none of which is good for the climate. Despite these horrors, consumer brands continue to drive demand for palm oil, and investors like BlackRock continue to finance it. (...)



The palm oil industry has demonstrated it is unable or unwilling to change its unsustainable ways. One thing this failure makes clear is that investors in the industry, like BlackRock, are doing little to drive improvements despite all their talk. (...)

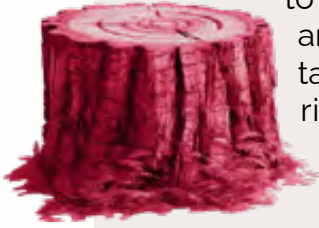
Enabled by BlackRock's money, dirty palm oil continues to be produced, traded and consumed with no consequence — and rampant deforestation continues to drive rapid climate change. If BlackRock claims to care about climate change, it needs to address its big palm oil problem. (...)

For years, campaigning organizations like Friends of the Earth, Greenpeace and Rainforest Action Network have worked to curb the destructive effects of the palm oil industry and to raise awareness among financiers and consumers. With the establishment of the Roundtable on Sustainable Palm Oil in 2004, many palm oil industry players have been forced to respond to the environmental and hu-

⁴⁰⁴ Karina González, "BlackRock's Big Palm Oil Problem," Friends of the Earth, n.d., <https://foe.org/blog/blackrocks-big-palm-oil-problem>.

man rights impacts of their industry in response to the RS-PO's principles and criteria. Since then, however, consensus has grown that the RSPO is inadequate. (...)

Environmental groups have pressured many companies to adopt additional No Deforestation, No Peat and No Exploitation policies, or NDPE – voluntary commitments to respect labor and human rights, stop development on peatlands and stop deforestation of high value and high carbon areas.



Eskom ⁴⁰⁵

Following the Gupta-Zuma State capture scandal and ensuing Zondo Commission investigation, the State-owned electricity utility Eskom began to redress the effects of State capture, establishing the State Capture Task Team (SCTT) and executing an Implementation Plan to address the Commission's recommendations. According to the company, no current Eskom employees are implicated in State capture as the key employees involved were dismissed or resigned. One of the success stories to date includes the matter of an unlawful payment of R1.6 billion to McKinsey, Trillian, and Regiments, for which former company executives were to be criminally investigated for improperly awarding them contracts. Eskom has recovered R1.1 billion from McKinsey and has won a judgment against Trillian. Through a collaborative partnership with the Special Investigative Unit (SIU), Eskom has recouped over R2 billion in funds unlawfully paid out to economic service providers. The combination of public findings and shame with parliamentary and prosecutorial inquiry has compelled Eskom, at least partially, to, so far, voluntarily redress some of the effects of State capture.

3.22.5 Free, prior, and informed consent (FPIC) and Community solutions

Energy and other extractive projects and related infrastructure, whether of fossil fuels or renewables, involve the land, territory, and natural resources of the people whose lives and livelihoods depend on these spaces. While ILO Convention 169 enshrines the participation and consultation rights of indigenous and tribal peoples specifically, the rights of indigenous peoples to participate in decisions made about their ancestral lands is an issue broadly accepted in international law. Accordingly, numerous bodies from the United Nations to the World Bank, as well as States throughout the world,

⁴⁰⁵ Mpho Makwana, "Eskom on dealing with State Capture fraud and corruption", ESI-Africa, 10 March 2023, www.esi-africa.com/finance-and-policy/eskom-on-dealing-with-state-capture-fraud-and-corruption.

recognize the right of any person affected by an extractive or infrastructure project — let alone any governmental decision — to free, prior, and informed consent before any permitting, development, or operational steps have been taken.

To be clear, the challenge to this right and the gap in its implementation are substantial: the corporate capture of the legislative, regulatory, and judicial enforcement mechanisms of both States and multilateral institutions insofar as ensuring meaningful compliance with FPIC. As opposed to “free,” “prior,” “informed,” and “consent” being absolute rights that effectively give communities veto power over projects, the default paradigm for States and companies promoting certain models of development is to treat these as checkbox exercises without allowing for meaningful community participation. Most often, States and companies prepare and even initiate projects ahead of time without ever consulting communities — let alone obtaining their consent.⁴⁰⁶

In this regard, FPIC is a pivotal issue in international development — namely the energy transition — and a huge opportunity for rightsholders, corporate accountability advocates, and other stakeholders to ensure that the transition is just insofar as the land, territorial, and natural resources rights of affected peoples are concerned. Some high-level opportunities and strategies that flow from FPIC include: Community and worker equity in development projects; Community-based natural resource management; Community-driven human rights due diligence (see earlier mention); and Due diligence laws in both home and host countries ([see respective section](#)); and Strategic litigation ([see ProDESC suit in France](#)).

Shared equity

One example of moving the needle on FPIC is First Peoples Worldwide, an independent organization housed at the University of Colorado Boulder’s Center for Native American and Indigenous Studies, in partnership between the University of Colorado Law School and the Center for Ethics and Social Responsibility at the Leeds School of Business, that integrates indigenous peoples’ perspectives into investment decision-making and leads a sustainable minerals and green transition coalition.⁴⁰⁷ “Through our extensive work to accelerate respect for Indigenous Peoples in the capital markets, First Peoples Worldwide (First Peoples) has formed vital partnerships with impact investors and has seen the enormous potential of collaboration between investors and Indigenous Peoples to catalyze meaningful change in both local communities as with institutional approaches to Indigenous Peoples.”⁴⁰⁸

⁴⁰⁶ Luisa Rodríguez Gaitán, Coordinator, Democracy and Human Rights Program, Heinrich Böll Foundation (Colombia), Interview on 11 September 2023.

⁴⁰⁷ “Mission, History & Team,” First Peoples Worldwide, n.d., www.colorado.edu/program/fpw/about.

⁴⁰⁸ Carla F. Fredericks and Kate R. Finn, “Harnessing Private Equity for Indigenous Peoples,” First Peoples Worldwide, University of Colorado-Boulder, December 2020, www.colorado.edu/program/fpw/sites/default/files/attached-files/harnessing_private_equity_for_indigenous_peoples_-_final.pdf.

According to Business and Human Rights Resource Centre, the core principles that should guide a fast and fair energy transition are:

- **“Shared Prosperity:** Effective business models driving fast transitions will build trust and stability and reduce systemic risk through shared prosperity models that build worker and community rights and participation in companies’ operations and supply chains, including co-equity models.
- **Duty of Care in Human Rights and Social Protection:** Governments and companies have a duty of care to shield workers and communities from harm; to deliver due diligence to minimise human rights and pollution risks; and to ensure social protection, retraining and new decent work.
- **Fair Negotiations:** Communities and workers need guarantees that negotiations will be fair throughout operation’s life-cycles. They will include community consultation and implementation of the principles of FPIC for Indigenous peoples and peasant communities; and guarantees that workers, Indigenous and community leaders (human rights and environmental defenders) will not be silenced through intimidation or violence.”⁴⁰⁹

Anti-corruption in community-based natural resource management (CBNRM)⁴¹⁰

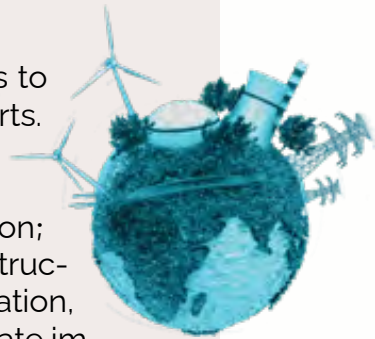
Corruption can affect natural resource management at many different levels, from local-level bribes for access to specific resources to national-level institutional capture backed by international economic interests. An individual villager, for example, may pay a forest guard to illicitly cut trees for small building projects, while at a much larger scale, the institutions and policies regulating the sustainable management of forests may be manipulated by vote buying, influence peddling, clientelism, or violence to allow for massive logging that serves private interests rather than those of the community.

⁴⁰⁹ Phil Bloomer and Michael Clements, "The heat is on: key principles for a just energy transition," Business & Human Rights Resource Centre, 30 August 2023, www.business-humanrights.org/en/blog/the-heat-is-on-key-principles-for-a-just-energy-transition.

⁴¹⁰ Brian Klein, Annah Zhu, Camilo Pardo-Herrera, and Saul Mullard, "Enrolling the Local: Community-Based Anti-Corruption Efforts and Institutional Capture," Targeting Natural Resource Corruption, February 2021, www.worldwildlife.org/pages/tnrc-topic-brief-enrolling-the-local-community-based-anti-corruption-efforts-and-institutional-capture.

Designing anti-corruption interventions holistically to account for these multiple layers of corruption has proven difficult. Indeed, even recognizing that these diverse layers exist and understanding how they interact and reinforce or undermine each other requires a multi-scale approach that many anti-corruption interventions in natural resource management lack. Rather, interventions to reduce corruption in natural resource management typically focus primarily on either local- or national-level dynamics, but rarely both at the same time. (...)

[There] are many and varied potential pitfalls to engaging communities in anti-corruption efforts. These often mirror the challenges motivating community-centered approaches in the first place, and include project capture or cooptation; design flaws; lack of attention to local power structures and asymmetries; deficiencies in information, trust, feedback, and local capacities; inadequate implementation; and unsustainability. (...)



A multi-level approach to anti-corruption is a challenging option. At the local level, it requires all the elements of building community trust and inclusion that have made community-based natural resource management effective. Yet, at the national level, it also requires an explicit awareness of elite interests in the specified resources to be managed, as well as the higher-level political dynamics surrounding these elite interests. This means tackling head-on the national-level dynamics that most community-based approaches hope to circumvent entirely. In this regard, a project context or situation analysis should include mapping existing interests and potential conflicts among these, to structure interventions that will more effectively respond to real-life dynamics of corruption.

3.22.6 Advocacy, ground-truthing, and popular measures

Among the many strategies that climate activists, corporate accountability advocates, rightsholders, and other stakeholders are deploying to combat the climate crisis and promote a just transition — including insofar as the corporate capture of the State is

concerned — is a mix of advocacy, strategic engagement, and ground-truthing. These strategies ensure that the voices and truths of those impacted by climate change and the energy transition — primarily in the Global South but also globally — are communicated to decision makers and their constituencies — mainly in the Global North — so as to advocate for effective remedy for human rights violations and environmental harms that have been caused.

If legislation, regulation, litigation, multi-stakeholderism, and voluntary measures are half of an advocate’s toolkit, then speaking truth to power through participatory measures — community organizing, campaigning, direct action, and public communication — rounds out the rest. What follows are a range of examples that illustrate the power of these approaches (we do not pretend to encompass even a sliver of all possible tactics):

- **Collective organizing:** Though we discuss this strategy subsequently (see relevant section below), its importance cannot be overstated: the most effective strategies are those that harness the collective strength of organized people. While, perhaps for some, “advocacy, ground-truthing, and popular measures” are euphemisms for NGO-led initiatives featuring North-North dialogues, Empower’s intent in including this section is quite the opposite. These strategies work best when backed up by a collective voice, a horizontal accountability mechanism that can hold powerful actors accountable if they renege on their commitments. In the social sector our access to money and political power does not compare to the wealth or influence of businesses and governments; however, we do have access to organized people or, in other words, numbers. These voices are critical inputs into any and all advocacy processes as well as public- and private-facing mechanisms.
- **Ground-truthing:** The act of people directly affected by climate change and the energy transition speaking truth to power is arguably the fulcrum of change. When done poorly, Global North CSOs and other stakeholders act as gatekeepers to ostensibly facilitate an outlet for Global South people to communicate with decision makers in the boardrooms and halls of power, while actually using their power as gatekeepers to further their narrow philanthropic, advocacy, or private interests, an act which is ultimately disempowering and alienating to communities and advocates in the South. When done well, ground-truthing is a horizontal process among equals whereby groups in the Global South and North, for example, establish a genuine transnational collaboration that recognizes the privileges and power dynamics within and agrees how to best speak truth to power. In this example, the group in the Global North is merely a gate-opener that walks with — not instead of — Global South communities in accompaniment of their advocacy.

As mentioned earlier, the Institute for Transnational Justice in Mexico is an organization expressly designed for this purpose. Other examples include PODER, the BHRRC, and Friends of the Earth, which strive to open gates and build collective

power. A particular example of an organization that facilitates channels of communication between civil society and investors is the Investor Alliance for Human Rights, based in the U.S.⁴¹¹

- **Campaigning:** While a huge area to cover, we include this strategy to refer to the public advocacy and communication efforts of groups that seek to create reputational risks for companies, investors, and regulators that contribute to the climate crisis. Often this type of campaign is called “naming and shaming,” but that moniker does a disservice to organizations whose objective is not to create shame but to achieve justice and remedy for affected peoples. For illustrative purposes we include three examples, as follows:
 - **Center for Constitutional Rights (CCR):** Through its Corporate Capture Project, CCR “[defends] progressive political movements from attacks their opponents wage using the law. Corporate entities like the American Legislative Exchange Council (ALEC) have used political influence to pass a series of laws that result in attacks against our allies. (...) In recent years, [CCR] has defended several movements facing repressive laws that are affiliated with ALEC, such as (...) water protectors that resist oil and gas infrastructure development targeted by Critical Infrastructure laws... In the wake of these fights, [CCR] has teamed up with our movement allies to focus on the source of some of these laws while we continue to defend our allies from the attacks directed at them. This work has involved litigating to demand that ALEC no longer meets with lawmakers in private to draft legislation; publishing research into ALEC’s activities; and supporting communities affected by ALEC to connect with each other for joint advocacy efforts when ALEC meets. (...) [CCR’s] Corporate Capture Project will develop additional litigation and political advocacy activities in the coming years to address the corporate control of law and policy making, which is a root cause of corporate human rights abuses.”⁴¹²
 - **Corporate Accountability International (CAI):** According to Bobby Ramakant, a CAI board member, “[its] climate campaigning and justice movement is top notch. That kind of analysis is really important. If you want to understand the climate issue, speak to them. That kind of organizing has been important in terms of corporate accountability. They also worked on and were involved in the tobacco industry since before the global tobacco treaty was formed. They push governments to adopt article 5.3 about the industry’s conflict of interests vis-a-vis public health. They also advocate for article 19 about corporate accountability. There is an opportunity

⁴¹¹ Mary Beth Gallagher, Head of Engagement, Domini, Interview on 31 August 2023.

⁴¹² “Corporate Capture,” CCR, n.d., <https://ccrjustice.org/Corporate-Capture>.

for people power to replicate this advocacy against the tobacco industry and within the tobacco treaty and push for preventing corporations from crossing the line. [CAI] is pushing for new accountability systems in both the climate and tobacco arenas.”⁴¹³

- **Kick Big Polluters Out:** This initiative is akin to a social movement that brings together individuals and organizations to remove Big Polluters from international climate change agreements, especially the COP. Its main demands are:
 - “No more writing the rules. Big Polluters must not be granted access to climate policymaking. This allows them to continue to unduly influence, weaken, and undermine the global response to climate change, and it’s why we are on the brink of extinction. The United Nations Framework Convention on Climate Change must urgently establish an Accountability Framework to end this corporate capture. As an immediate next step, all participants must be required to publicly disclose and declare their interests. People deserve to know who is at the policymaking table, and what their real agenda is.
 - No more bankrolling climate action. No Big Polluter partnership or sponsorships of climate talks or climate action. Not now. Not ever. Major polluters must not be allowed to greenwash themselves and literally buy their way out of culpability for a crisis they have caused. Already, two major polluters have been named as COP27 partners- Coca-Cola, the world’s largest plastics polluter and a major political blocker of action; and Microsoft, the world’s largest tech partner to the oil and gas industry. The UNFCCC will always fail to deliver so long as this is deemed acceptable.
 - Polluters Out — People In. While civil society has always participated in the COP process, governments have made it more difficult each time for NGOs and climate justice movements to have their voices heard. We need equitable, meaningful inclusion. Climate action must center the leadership and lived experience of the people, especially those on the frontlines of the climate crisis. With frontline communities in the lead, we must end the funding and validation of dangerous distractions and false solutions that promote Big Polluters’ profits, enable their abuses, and guarantee decades more of fossil fuel use.
 - Reset the system. Capitalism is destroying life as we know it. It’s time to build a new way of living and collaborating that works for people, not polluters, and that restores, rather than destroys, nature. We need real,

⁴¹³ Bobby Ramakant, Policy Director, Citizen News Service (India), Interview on 8 September 2023.

just, accountable, gender responsive, community-led, nature-restoring, and proven and transformative solutions to be implemented rapidly and justly. We need a total and equitable transition off of fossil fuels. We need real solutions that center the rights of Indigenous peoples, local communities and the protection of those speaking up for justice. We need an end to the impunity of corporate abuses.”⁴¹⁴

- **Climate strikes:** In addition to the Sunrise Movement in the U.S., young people in Europe — and increasingly across the world — have organized themselves through Fridays for Future, “a youth-led and -organised global climate strike movement that started in August 2018, when 15-year-old Greta Thunberg began a school strike for climate.” Its demands are: “Keep the global temperature rise below 1.5 °C compared to pre-industrial levels; Ensure climate justice and equity; and Listen to the best united science currently available.”⁴¹⁵
- **Popular consultations:** The use of popular consultations, referendums, and other votes has become more commonplace in Latin America, for example, where Chile, Ecuador, and Mexico have all put important questions to the public over the past few years. For example, in August 2023, Ecuadorians voted in a popular consultation to ban oil drilling in the Yasuní National Park, in the Amazon rainforest. Approximately 60% of voters rejected oil drilling.⁴¹⁶ While the Government of Ecuador has said it will respect the vote, the country recently elected a new president who has indicated he may not abide by the outcome.

We began this chapter by asking, as a movement of advocates, funders, and rightsholders:

- What would a fundamental rethink of global corporate regulation look like?
- If the goal were instead to create a system that worked fairly for all the actors in the global economy – from developing nations to economically vulnerable communities —, how would we design the baseline rules for global corporate conduct?
- What is the role of markets as part of this post-neoliberal order?
- What’s the role of civil society given shifting geopolitical power dynamics?
- What’s the role of philanthropy?

⁴¹⁴ “Nuestras Demandas,” Kick Big Polluters Out, n.d., <https://kickbigpollutersout.org/demands>.

⁴¹⁵ “Who We Are,” Fridays for Future, n.d., <https://fridaysforfuture.org/what-we-do/who-we-are>.

⁴¹⁶ Claudia Rebaza and Hannah Holland, “Ecuadorians vote to ban oil drilling in the Amazon in ‘historic’ referendum,” CNN, 21 August 2023, <https://edition.cnn.com/2023/08/21/americas/ecuador-oil-drilling-amazon-climate-intl/index.html>.

Across tens of interviews and hundreds of documents reviewed, we at Empower have answered these questions, or at least provided food for thought as we collectively work towards solutions. Despite numerous and profound challenges, as of January 2024 there is reason for optimism that the corporate capture of the State can eventually be stopped. Many of the opportunities, strategies, and innovations for concrete interventions that we identified are already being implemented by civil society organizations, governments, and businesses. Oftentimes these bright spots are mere flashes in the pan, while other times they are full-fledged programs. Either way, there are opportunities for adaptation, replication, and scalability.

At the outset of this chapter, we questioned not only how to bridge the abyss of boundless corporate power, at once a product of the corporate capture of the State as well as market concentration, but also how to move forward from there towards a new economic paradigm, where progressive industrial policy, a just energy transition, fair markets, improved transparency, and meaningful accountability and remedy hold so much promise.

Through the course of our horizon scan we encountered the work of Dark Matter Labs, whose words seem an apt blueprint for the new economic paradigm ahead:

We are living through a complex, epoch-making moment that demands a planetary level of collective intelligence. In many respects, our understanding of the scale of Europe's just transition challenge is only beginning to crystallise (...) ⁴¹⁷

Around the planet, we're feeling the consequences of outdated institutions and inadequate infrastructures incapable of coping with planetary-scale challenges. At Dark Matter, we believe in taking on these challenges via a new, civic economy. An economy that's community-led, and based on many-to-many relationships. An economy that prioritises mental wellbeing and Nature-based Solutions as platforms for further change. We're an ambitious not-for-profit designing and building the underlying infrastructure to support this new civic economy, exploring how ownership, legal systems, governance, accountability and insurance might begin to change. We're establishing toolkits and blueprints, pilots, and case studies, supporting communities and institutions with applications, digital products and civic technologies that challenge established thought and demonstrate that an alternative is possible. We're working to initiate a boring revolution that will propel wider societal transition. ⁴¹⁸



⁴¹⁷ "Laudes x Dark Matter Labs: A just transition of Europe's built environment," Dark Matter Labs, 24 May 2023, <https://medium.com/hub-engine/laudes-x-dark-matter-labs-a-just-transition-of-europes-built-environment-part-4-89c7683bd2c7>.

⁴¹⁸ "About," Dark Matter Labs, n.d., <https://darkmatterlabs.org/About>.



4.

INTERVIEWS

4.

INTERVIEWS

Integral to our horizon scan of opportunities, strategies, and innovations to tackle and stop the corporate capture of the State were interviews with advocates, practitioners, researchers, regulators, and businesspeople — all experts in their fields — from across the world, primarily in the Global South. What follows is the list of interviewees, including their professional role, affiliation or organization, sector of society, and country where they are based. A few interviewees — expressing concern about reprisals for their participation — requested not to be listed or even mentioned. Their contributions as well as those of people listed below were invaluable inputs for this report.

#	Person	Role	Organization	Sector	Country
1	Alejandra Ancheita	Executive director	Proyecto de Derechos Económicos, Sociales y Culturales (ProDESC)	Civil society	Mexico
2	Anonymous	Co-founder	Anonymous	Civil society	India
3	Daniel Castrejón	Researcher	Project on Organizing, Development, Education, and Research (PODER)	Civil society	Mexico
4	Conectas team	Team	Conectas	Civil society	Brazil
5	Christián Dummer	Gerente corporativo de Gestión Estratégica	Codelco	Business / SOE	Chile
6	Leilani Farha	Global director	The Shift	Civil society (formerly of the U.N.)	Canada
7	Mary Beth Gallagher	Head of Engagement	Domini Impact Investments LLC	Business	U.S.
8	Denise Hearn	Resident Senior Fellow	The Columbia Center on Sustainable Investment	Civil society	U.S.
9	Antoine Heuty	CEO	Ulula	Business	France
10	Adriana Labardini	Former	Instituto Federal de Telecomunicaciones	Government	Mexico
11	David Lewis	Founding executive director	Corruption Watch	Civil society	South Africa

12	Heraldo Muñoz	Former Foreign Minister	Ministry of Foreign Affairs	Government	Chile
13	Paloma Muñoz	Director, Human Rights	Business for Social Responsibility (BSR)	Civil society	U.S.
14	Devi Pillay	Researcher	Public Affairs Research Institute (PARI)	Civil society	South Africa
15	Oscar Pineda	Senior researcher	Project on Organizing, Development, Education, and Research (PODER)	Civil society	Mexico
16	ProDESC team	Team	Proyecto de Derechos Económicos, Sociales y Culturales (ProDESC)	Civil society	Mexico
17	Bobby Ramakant	Policy director	Citizen News Service	Civil society	India
18	Sarojeni Rengam	Executive director	Pesticide Action Network Asia-Pacific (PANAP)	Civil society	Malaysia
19	Representative	Management team	Centre for Applied Legal Studies (CALs)	Civil society	South Africa
20	Luisa Rodríguez	Coordinator, Democracy and Human Rights Program	Fundación Heinrich Böll-Colombia	Civil society	Colombia
21	Miriam Saage-Maaß	Legal director	European Center for Constitutional and Human Rights (ECCHR)	Civil society	Germany
22	Mona Sabella	Coordinator, Corporate Accountability	ESCR-Net	Civil society	U.S.
23	Anamaria Schindler	Board member	Conectas	Civil society	Brazil
24	Joseph Wilde-Ramsing	Advocacy director	The Centre for Research on Multinational Corporations (SOMO)	Civil society	Netherlands



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