



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

A summary of key findings, with a focus on
the Global South and the Energy Transition

APRIL 2024





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APRIL 2024

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1.

EXECUTIVE SUMMARY

1.

EXECUTIVE SUMMARY

On August 6, 2014, communal landowners and campesinos in the tiny town of Bacanuchi, Sonora, just 100 km south of the U.S.-Mexico border, witnessed history: 40 million liters of heavy metal and toxic sludge — the worst environmental disaster in the history of Mexico's mining industry — washed through the tiny town of just a hundred families. In the blink of an eye, livestock died, crops and livelihoods were destroyed, and, along the 270 km path of the Bacanuchi and Sonora Rivers, the health of 22,000 directly affected people was irremediably jeopardized.

Grupo México, the Mexican multinational extractive and transportation company, one of the world's largest mining companies, was responsible. The company began operating a holding pond that services a copper mine tailings processing facility without the proper permits and safety measures, and before construction was even complete. A decade later, the company remains impune, the government promotes endless dialogues and studies, and the lives, livelihoods, and environment of Rio Sonora have yet to be remedied or repaired.

How did corporate capture contribute to this disaster, at the source of a critical mineral for the renewable energy transition worldwide? A decades-long effort to systematically capture the Mexican State by the company's beneficial owner, German Larrea, and five dozen other billionaires succeeded in these elite actors becoming monopolists and oligopolists, following the privatization of State-owned enterprises throughout the 1980s and 1990s. Today, the Mexican Business Council represents 61 billionaires¹ whose combined influence over the country's economy accounts for 34% of GDP, not to mention their outsized influence over public decision-making as the largest public contractors in Mexico.²

Grupo Mexico and the Rio Sonora case illustrate the dire importance of tackling and ending the corporate capture of the State, the *raison d'être* for this horizon scan report focused on the Global South. This phenomenon constitutes a fundamental building block of corporate power, an anti-democratic force that sprang from advanced capitalism and neoliberalism, and now threatens to exacerbate the climate crisis.

¹ Mario Alberto Gámez and José Raúl Linares, "Consejo Mexicano de Negocios: más poderoso que nunca," *El CEO*, 8 February 2024, <https://elceo.com/negocios/consejo-mexicano-de-negocios-mas-poderoso-que-nunca>.

² 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>.

It is precisely our reliance on the goods and services provided by powerful corporations, coupled with the human rights impacts and environmental harms they cause, that we seek to address in this report. Our goal is to identify ideas that can be adapted, replicated, and scaled to fight back against corporate capture and promote a new economic paradigm. This vision encompasses an inclusive, green, and progressive industrial policy; competitive, innovative, and fair markets, ensuring meaningful corporate transparency and accountability; a just energy transition; and human rights obligations for both states and companies, including access to effective remedies in case of violations.

At Empower, we define the corporate capture of the State as the influence exerted through legal or illegal means by an economic elite — particularly large corporations — over State functions, policies, laws, and resources. This relentless pressure results in the consolidation of corporate power (beyond small-scale corruption) and economic benefits for the rich, while simultaneously undermining the public interest. This concept of capture shifts the focus from the object of capture (the State) to the subject (the corporation) exerting undue influence.

From July 2023 to January 2024, Empower — a worker-owned and worker-governed corporate accountability and human rights organization in Mexico — conducted 24 interviews and reviewed over 200 documents to identify state-of-the-art ideas, primarily in the Global South, for tangible, upstream opportunities for civic engagement and philanthropy to better orient governments and policy-making regarding corporate capture, as well to tackle these issues as part of a just transition.

Empower identified numerous opportunities, strategies, and innovations — primarily in the Global South — for how to address this phenomenon. For corporate accountability advocates, we can make a positive impact at a meaningful scale both now and in the years ahead. Though the challenges presented by corporate capture are formidable, and the gaps to address them significant, there are also marked trends, patterns, and practices that, when studied, reveal vulnerabilities and opportunities to pressure for change. Whether at the national, regional, or transnational level, governments, policymakers, businesses, and civil society alike can and must participate to ensure the protection of human rights, build a more inclusive economy, and reshape markets as part of a post-neoliberal order.

"The world has enough for everyone's need, but not enough for everyone's greed."

- Mahatma Gandhi

1.1 Overview of key findings

Following a wide-ranging literature review and expert interviews, primarily across the Global South, Empower was able to identify numerous opportunities, strategies, and innovations for the corporate accountability movement to address and stop the corporate capture of the State. What follows is an overview of our key findings. Subsequently, in Chapter 4, we expound upon each of these points and more.

As a corporate accountability movement considering the opportunities to tackle corporate capture covered in this report, our overriding consideration should be whether the implementation in question prioritizes the rightsholder above all else. This was the lens through which we conducted our horizon scan here at Empower.

1.1.1 Corporate capture of the State: Opportunities, strategies, and innovations

Beneficial ownership disclosure: The Holy Grail of corporate and fiscal transparency is for States to create beneficial ownership registries disclosing the name, nationality, and country of residence of the physical person or people behind a corporate entity. How else can we learn at scale who's behind corporate capture and economic concentration?

Improve corporate disclosure, strengthen the right to know: On the supply side of capture, corporate transparency laws in the Global North already allow us a peek into who captures the State and how; however, they lack enforcement and extraterritoriality. In the Global South, Brazil and South Africa have shown progress, other States not so much. On the demand side, fiscal transparency and freedom of information are opportunities to discover if a State is captured.

Warning systems to monitor red flags: Soon, anti-corruption indices and information technology will allow us to monitor, measure, visualize, report, and alert about acts of State capture. For example, if a suspicious beneficial owner wins a public contract, we could receive a report and act accordingly.

Financial regulation, including oversight: With improved parliamentary and judicial oversight and civic engagement we can disincentivize corporate capture, close legal loopholes, and enforce laws while leveraging emerging disclosure and due diligence to monitor corporations, economic service providers (ESPs), and financial intermediaries more effectively.

Transnational collaboration of financial intelligence units and prosecutors: There is an opportunity to improve global regulatory coherence, as well as between and within countries, including promoting greater mechanisms and ease of transnational collaboration between prosecutors and financial intelligence units.

Create obligatory measures: There is no substitute for obligatory corporate accountability measures that compel businesses to adhere to the law. The best example is the U.N. Binding Treaty on Business and Human Rights. Additional obligatory measures include supply chain due diligence, forced labor, anti-deforestation, and public procurement laws.

Business and human rights framework: The corporate responsibility to respect has been codified in five European nations' due diligence laws. A dozen or so other countries have passed or are debating similar laws, in addition to the European Union.³ However, jurisdictional enforcement is untested and Global South States do not have similar legislation. Regarding access to remedy, cross-company grievance mechanisms and worker-driven social responsibility hold promise.

Strengthen anti-corruption measures through law and policy:

- **Improve regulation, close loopholes:** Corporate capture is not codified into law; rather, the modes of capture, such as bribery, are crimes. We must reform lobbying and regulate forms of influence, limit corporate political engagement, shut the revolving door, tackle tax havens, and strengthen anti-bribery laws including extraterritoriality.
- **Anti-State capture regulator:** The Zondo Commission in South Africa effectively proposed an anti-State capture regulator, offering a template for possible adaptation.
- **Commissions of public inquiry:** As a standalone innovation the Zondo Commission is a clear model for how to investigate capture while allowing for civic engagement.
- **Increase judicial mandates, pursue criminal prosecutions:** If capture is codified, or if judiciaries are empowered to prosecute capture, then prosecutors and judges would have more tools at their disposal. Multi-jurisdictional investigations and prosecutions, including tracing illicit financial flows, are needed.
- **Conditionalities via progressive industrial policy:** Scholars Dani Rodrik and Mariana Mazzucato state that "conditionalities are important to the design of industrial policies and (...) their absence could hamper success or lead to parasitic relationships, or capture, whereby businesses simply get handouts and subsidies from lobbying."⁴

³ As of February 2024, approval of the Corporate Sustainability Due Diligence Directive (CSDDD), proposed by the European Commission in 2022, had been postponed due to a lack of consensus among European Union member States. See: Simon Mundy, "Landmark EU legislation hangs in the balance," Financial Times, 14 February 2024, www.ft.com/content/05bf9f3d-90db-4aed-b925-b8664529cda5.

⁴ 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.

- **Public procurement reform:** Though the Zondo Commission's recommendations fell short, South Africa made sweeping procurement reform, which, if an independent regulator or anti-corruption office were added, could be a model for other nations.
- **Address capture of multilateral institutions, while strengthening their anti-capture functions:** If and when the capture of the Organization for Economic Co-operation and Development (OECD) and the United Nations (U.N.) is addressed, these institutions could play an important role globally to address and stop capture. This also applies to the World Bank, the U.N. Conference on Trade and Development (UNCTAD), and the U.N. Convention against Corruption (UNCAC).
- **Improve whistleblowing mechanisms, support leaking platforms:** The black box problem is that we lack data, evidence, and methodologies to identify and track capture. Whistleblowing protections and leaking platforms can solve this.

Close tax loopholes, support the Nuevo Pacto Fiscal: The list of tax loopholes is long, but some proposals to fix them include: windfall taxes, addressing externalities through taxation, eliminating the carried interest loophole, closing tax-free provisions on Real Estate Investment Trusts (REITs), and addressing transfer pricing. Also, a promising strategy with global potential is the Nuevo Pacto Fiscal (New Fiscal Agreement), proposed by the Global Initiative for Economic, Social and Cultural Rights and other civil society organizations (CSOs).⁵

Decentralize funding, build a movement: There is a paucity of organizations in the Global South with explicit anti-corporate capture programming. Empower recommends 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 variety of organizations and regions.

Integral data-research-communication-organizing-advocacy model: Globally, six CSOs in the Global North and South have developed integral strategies to address capture: the Project on Organizing, Development, Education, and Research (PODER) and the Initiative for Transnational Justice in Mexico, the Civil Society Working Group on State Capture (CSWG) in South Africa, the International Network for Economic, Social and Cultural Rights' (ESCR-Net) Corporate Accountability Working Group (U.S., global), Oxfam International (UK, global), and Transparency International (Germany, global). These innovative models could be adapted, replicated, and scaled elsewhere.

⁵ "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>.

Explain corporate capture, make it visible: How can we bring capture into the light? A prerequisite for any attempt to answer this question is data about who captures who or what, and how. Some scholars, CSOs, investigative journalists, and watchdog organizations employ a mix of data-driven approaches, case studies, and strategic corporate research.

- **Track and measure the demand side of State capture:** We still lack data and technology to measure capture in real time. However, a couple of as-of-yet isolated developments offer promise, especially on the demand side of State capture. One is the upcoming Global Composite Index of State Capture. Another is the State Capture Estimation and Monitoring of Anticorruption Policies at the Sectoral Level (SceMaps).
- **Data analysis and visualization:** A leading example is QuiénEsQuién.Wiki (QQW), the largest open data source on businesspeople, companies, and procurement data in Latin America. If paired with the Global Composite Index or SceMaps, QQW could expand our ability to track and measure State capture back to its source: corporations.
- **Strategic corporate research on the supply side:** A handful of CSOs worldwide follow the money and uncover who benefits and how from capture and corporate-sponsored human rights and environmental violations. This allows us to hold businesses and governments accountable and expose wrongdoing.
- **Conflict zones and illicit interests:** Conflicts offer the perfect albeit cynical opportunity to capture the State and make a buck before anyone is the wiser. Two CSOs are making visible the corporate capture and corporate-sponsored violations in conflict-affected and high-risk areas, including the role of armed actors and public security.
- **Political education:** 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. For example, the Corporate Accountability Working Group (CAWG) has produced an innovative online comic books series called "The Power of the 99% to Stop Corporate Capture."
- **Independent oversight of reform and regulation:** Bottom-up oversight strategies to reform laws and regulate capture have shown promise, such as the example of (CSWG) in South Africa, a public-facing group of CSOs that held the Zondo Commission accountable.

1.1.2 Corporate capture of the energy transition: Opportunities, strategies, and innovations

Given that climate change is arguably the most critical challenge facing humanity and that the energy transition is one pathway to address this emergency, in our horizon scan we emphasized the risks associated with a “corporate energy transition”⁶ as well as the opportunities, strategies, and innovations to address it. Undoubtedly, the energy transition is a pivotal topic in the 21st century and corporations are prone to capture it. In Chapter 4, we elaborate on these key findings regarding the energy transition.

Address corporate capture in emerging legislation and regulation: Recent attempts to regulate the energy transition portend a transfer of benefits and wealth from the State to corporations. Going forward, corporate accountability advocates have an opportunity to shape future legislation by insisting on anti-capture provisions.

Climate litigation and funding: Cases in Brazil, Portugal, and Germany make creative use of climate litigation to push for human rights and environmental protections. If climate suits are to be replicated or taken to scale, advocates may consider turning to litigation funding.

Include conditionality in just energy transition partnerships and climate finance mechanisms: Rodrik and Mazzucato’s conditionality could also be applied to climate finance, for example the EU Just Energy Transition Partnerships (JETPs) or strategic resource partnerships. These are opportunities for improved conditionality as well as civil society collaboration in oversight.

Investor-focused strategies, including ringfencing and divestment: Calls to ringfence and divest from fossil fuels and related infrastructure, while promising, have unintended consequences: private equity funds scoop up the distressed assets. Strategic engagement between advocates and investors poses an opportunity to advance the just transition.

Civic engagement in oversight: Civic engagement mechanisms whereby affected communities, workers, and CSOs participate in decision-making and governance are necessary in the just transition, including community-based natural resource management, multi-stakeholder initiatives such as the Extractive Industries Transparency Initiative (EITI), and participatory budgeting and planning processes.

Grassroots organizing first, and grasstops advocacy, engagement, and litigation second: Collective action must be the first step in any civil society involvement in the energy transition. We must create permanent, grassroots-led, people-driven horizontal

⁶ “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. Pgs. 1-3.

accountability mechanisms. None of our strategies will work unless backed up by grassroots organizing. Between the grassroots and grasstops is a middle layer of CSOs that facilitate ground-truthing, accompany the organizing efforts of grassroots organizations in the Global South, and open gates and establish genuine transnational collaborations between the South and North. At the grasstops level, larger CSOs play an important role in ground-truthing, lifting-up voices from the Global South, strategic litigation, or creating visibility for cases.

Strategic litigation leading to paradigmatic shifts: FPIC rights must be protected in the energy transition, particularly of land, territory, and natural resources. CSOs such as ITJ, ProDESC, PODER, Conectas, the Colectivo de Abogados José Alvear Restrepo (Cajar), the Center for Legal and Social Studies (CELS), the Socio-Economic Rights Institute of South Africa (SERI), and the European Center for Constitutional and Human Rights (ECCHR) employ agrarian, civil, and criminal litigation in the Global South, European due diligence laws, North-South and South-South extraterritorial claims, and other creative uses of the law in home and host jurisdictions.

Climate data supply chain bonanza: An important opportunity arising from new climate regulation is the mountain of new data coming online. In terms of corporate and supply chain transparency, the scale of this data bonanza will feed new strategies for accountability, including about the supply and demand of corporate capture.

Call out hypocrisy in MSIs and partnerships, while using them to boost transparency: Multi-stakeholder groups, global partnerships, and voluntary cooperation mechanisms are rife with greenwashing, false solutions, and other effects of corporate capture. The Kick Big Polluters Out campaign and similar efforts in the Binding Treaty deserve support.

The background of the slide is a complex, layered image. At the bottom, a globe is shown in a reddish-orange hue, with two oil pumpjacks (jack-o'-lanterns) positioned on its surface. Overlaid on the globe and extending upwards is a semi-transparent grid with a light blue background. This grid contains various financial data points, including numbers and bar chart elements, rendered in a light blue color. The overall aesthetic is one of global finance and energy.

2.

INTRODUCTION

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"The void of national sovereignty, to a great degree caused by global capital and its institutions, has essentially been filled by corporate power. Today, State decision-making – once the manifestation of the public interest – to a varying degree has been captured by global capital and transnational corporations, whereby an oligarchy – through a revolving door of influence between government and business elites, often illegally – obtains and maintains among a privileged few decisive influence over everything from macro-economic policy to procurement."⁷

When these words were written at the outset of 2019, many of the tumultuous events that occupied headlines these past few years had not yet occurred. The Covid-19 Pandemic. The resulting global recession of 2020-21. The rise of environmental, social, and governance (ESG) indices, followed by the anti-woke backlash. Yet another peak of global warming and the worsening of the climate crisis, and so on.

⁷ 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>.

During this time, unaccountable corporate behavior has been on constant display, testing the sovereignty of States. Hedge fund speculation in Treasury futures nearly wrecked the U.S. economy in 2020. Covid-related supply chain delays threatened just-in-time global logistics networks, while the profits of platform and other big technology companies spiked. The Russian invasion of Ukraine led to natural gas scarcity and energy price speculation, leading to record profits for oil and gas companies. And the implosion of cryptocurrency markets and banking failures nearly bankrupted investors, until the State stepped in.

In the Global South, the manifestations of corporate power have been shocking, both as a threat to national sovereignty but also in their complicity with authoritarian regimes. During the Bolsonaro administration in Brazil, agribusiness, mining, and other interests worsened deforestation and displaced indigenous and rural communities in the Amazon. In India, the Adani Group spread its wings to become a multinational empire, relying upon close ties with the Modi government. The election of a populist president in Mexico and a promise to separate economic from political power resulted in the State doubling down on public contracts for the country's wealthy elite. And in South Africa, after years of public inquiry into State capture, some of the same parastatal corporations accused of corruption continue to flourish while the country suffers from electricity shortages and housing woes.

In this context, corporate power has become emboldened and public institutions have been alternatively co-opted or pushed aside. In the corporate accountability movement, advocates, and rightsholders alike have asked ourselves a series of tough questions: What's the role of civil society given shifting geopolitical power dynamics? What is the role of markets as part of a post-neoliberal order? What's the role of public officials and policymakers, of the State itself?

Ultimately, as we respond to these challenges as a corporate accountability movement, we also face an opportunity to reimagine the corporation itself in the context of a new economic paradigm: What would a groundbreaking rethink of global corporate regulation look like if we started from fundamentals with a blank slate? If the goal were to create a system that worked fairly for all actors in the global economy — from developing nations to economically vulnerable communities — how would we design the baseline rules for human rights-respecting corporate conduct?

From July 2023 to January 2024, Empower conducted a horizon scan, including dozens of interviews and reviewing hundreds of documents, to scope the corporate accountability and regulatory fields and contribute strategic thinking to address these questions and the challenges posed by corporate capture. We focused primarily on Global South actors and institutions, as well as the renewable energy transition across the board. We identified numerous problems and gaps, but also sifted through opportunities to find promising strategies and innovations for change.

Internally, we compiled a comprehensive report of the information gathered from our interviews and literature review. However, so as to prioritize readability and (hopefully) the appropriation of our content, we decided to synthesize the main findings of our horizon scan here in the present report, leaving the majority of our detailed results as a separate companion reference in an accompanying document. Readers interested in a specific section or topic found in this report can refer to the separate document and delve deeper into their areas of interest. Additionally, one can find supplementary information about the CSOs leading the fight against corporate capture, particularly in the Global South, case studies, expert commentary, and an exhaustive bibliography for further reference. The accompanying document serves as an extensive catalog about the phenomenon of corporate capture.

The contours of how we can stop corporate capture and transform our economic paradigm are an inclusive, green, progressive industrial policy; competitive, innovative, and fair markets, including meaningful corporate transparency and accountability; a just energy transition; and human rights obligations for State and companies, including access to effective remedy in the case of violations. There is reason for optimism.

2.1 Corporate capture of the State: The phenomenon and its definitions

As corporate accountability advocates in 2024, we find ourselves straddling an abyss. On one side is advanced capitalism and the neoliberal order from whence we came. On the other side is our future, yet unwritten. Below is a chasm filled with the features, bugs, and externalities of our economic, political, and social systems. Without lifting a finger we could easily fall in, succumbing to the inertia of our current trajectory.

If we are to traverse the abyss and determine a more humane, just, and sustainable path forward — a stakeholder economy that prioritizes the common good — we must understand and fix the pitfalls of our current system. Arguably, one of the most prominent ones, possibly even the defining feature of advanced capitalism, is the corporate capture of the State.

This horizon scan is both a temperature check as well as a response to the corporate capture of the State, or corporate State capture, a nebulous term that clearly resonates with civil society actors but lands awkwardly with regulators and especially business-people. What is corporate capture and why does it pose an urgent problem deserving of our attention? Before addressing this in depth, it is wise to discuss how this and related terms, such as State capture and political capture, are defined, overlap, and differ.

2.1.1 Corporate capture is our focus

At Empower, across dozens of interviews conducted and hundreds of written sources reviewed, we were unsurprised yet admittedly disappointed to find that the “Corporate capture of the State” remains a niche term whose use is largely confined to civil society

organizations and spaces. And within civil society, its usage is not widespread, nor is the concept broadly understood. This may be due to a lack of recognition of the actual phenomenon or confusion with similar terms.⁸

To better understand the phenomenon, we have chosen the definitions and discussions of three organizations — the Dalberg Group, ESCR-Net’s Corporate Accountability Working Group, and PODER — in addition to our own here at Empower.

In its most essential form, corporate capture is the “use of public institutions for private interests.”⁹ Importantly, it is a manifestation of a broader phenomenon, corporate power, the “use of market power or market mechanisms to undermine the public interest.”¹⁰ Corporate capture is a fundamental building block of corporate power.

Dalberg, a strategy and policy advisory firm based in the Global North but with offices throughout the Global South, produced an instructive chart for gauging corporate capture (see Table 1).¹¹ Each of the five archetypes — Replace, Commandeer, Influence, Frustrate, and Evade — refers to the operationality of corporate capture, the overarching mechanisms through which it operates. From Replace through Evade, respectively, the archetypes pass from more overt to more subtle forms of capture. As discussed subsequently, other organizations use a similar spectrum of understanding to describe and explain corporate capture, with some variations.

A pioneer in the conceptualization and usage of the term “corporate capture of the State,” or simply corporate capture, is the International Network for Economic, Social and Cultural Rights (ESCR-Net) and, in particular, its Corporate Accountability Working Group (CAWG). ESCR-Net comprises hundreds of grassroots organizations, social movements, and civil society organizations (CSOs) across the globe, primarily in the Global South. Ten years ago, in November 2013, over 80 Network members met in Bangkok, Thailand, and launched the Corporate Capture Project.¹² 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.

⁸ “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. Pg. 12.

⁹ “Strategy Horizon Scan on Corporate Accountability: Navigating Corporate Influence in the Climate and Energy Sector,” Dalberg, 15 June 2023. Private document not intended for public distribution.

¹⁰ *Ibid.*

¹¹ “Open Society Foundations: Strategy Horizon Scan on Corporate State Capture,” Dalberg, 4 April 2023. Private document not intended for public distribution. Chart edited for readability.

¹² “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.

Table 1 — Preliminary conceptual framework for understanding the intensity of corporate capture

Corporate capture archetype	Description
Replace	A corporation replaces the State and acts as the State itself. Historical examples include the role of Ford in Fordlandia, Brazil. Potential examples from a more modern context include the privatization of public security services.
Commandeer	A corporation is able to directly dictate State policy by working through the organs of the State. Examples include the Gupta Family's success in commandeering the South African State.
Influence	Corporate consolidation grows strong enough to heavily influence (but not directly dictate) State policy. This can occur through mechanisms such as direct lobbying, economic diplomacy, influence via multi-stakeholder partnerships and convening mechanisms, and the "revolving door." The corporate capture of academic institutions and think tanks can also be a key mechanism for influencing government policy.
Frustrate	A corporation is able to frustrate the implementation of State policy. This can occur both through direct efforts of corporations, such as those mechanisms listed above, as well as direct influence through judicial systems.
Evade	A corporation is not able to stop a policy from happening, but is able to evade the application of that policy to itself and its interests.

As a result of an international study of ESCR-Net members, CAWG began to define the term as follows: “Corporate capture is defined by the undue influence that corporations exert over national and international public institutions, manipulating them to act according to their priorities, at the expense of the public interest and the integrity of the systems required to respect, protect and fulfill human rights, and safeguard the environment. As such corporate capture operates as a significant ‘root cause’ of corporate human rights abuses.”

The Corporate Capture Project went beyond defining the problem — a unique part of its definition is the role capture plays in undermining human rights protections — to identify ways to confront it, including: strategic litigation; exposing corporate capture using open data and technology; supporting community-based efforts; advancing transparency legislation and enforcement; holding politicians accountable; monitoring corporate practices, lobbying registers, and freedom of information requests; and promoting executive action to prohibit the revolving door phenomenon.

Though corporate capture is where CAWG focuses, the Network’s coordinator for corporate accountability, Mona Sabella, recognizes that the term “economic elite,” and not just “corporation,” more broadly expresses different manifestations of capture. “It could be a private corporation, or it might be a State-owned enterprise. Either way, it is an economic elite that may exist within political parties, corporate entities, etc. Essentially, the action is the same: capturing decision-making (within the State). In essence, decisions are being captured for business objectives (profits, building capital, etc.)”¹³

More recently, in “Manifestations of Corporate Capture,” CAWG, like Dalberg, identified the operationality of capture in the work areas and territories of its members:

- **Community manipulation:** Community manipulation refers to the corporate undermining of community decision-making processes related to an investment project. The strategies employed involve the use of financial or other incentives to entice community leaders to support corporate projects that undermine the interests and decisions of the wider community (...) Corporate Social Responsibility (CSR) can be used as a tactic to manipulate or divide communities. (...)
- **Economic diplomacy:** The economic diplomacy dimension of corporate capture refers to support from diplomatic missions [that] advance the interests of corporations from their countries operating in foreign countries in cases where these actions are at the expense of the human rights of local people.
- **Judicial interference:** Judicial interference is the influence corporations exert over the proceedings and rulings of courts, which provide favorable outcomes for corporations and undermine due process and efforts at seeking access to remedy and accountability.
- **Legislative and policy interference:** The pressure exerted on legislatures and policy makers by corporations and their representatives to provide greater opportunities for business, or remove/undermine regulation of corporate activities, which ultimately undermine the protection of human rights. [This can also involve donations for electoral campaigns.]
- **Privatizing public security services:** Privatizing the use of public security services involves the provision of a salary or other inducements by corporations for police, army, or other public security services to act in their interest against local communities.
- **Revolving door:** 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,

¹³ Mona Sabella, Coordinator, Corporate Accountability, ESCR-Net, Interview on 6 September 2023.

lessening the application of existing regulations, and securing favorable corporate contracts with state agencies.

- **Shaping narratives:** The influence of the public opinion by manipulating the media and spreading dominant narratives about progress and development, is another manifestation of corporate capture. [This might also involve delegitimizing the struggles of affected groups and communities that protest against corporate interests or for justifying the privatization of public services or resources.]
- **Capture of academic institutions:** The involvement of corporations in financing academic institutions, affording them opportunities to influence educational priorities including curricula, as well as research agendas.¹⁴

One of the initiators of the Corporate Capture Project is the corporate accountability and human rights organization PODER, based in Mexico. Since 2010, it has identified State capture, and specifically the corporate capture of the State, as the root cause of corporate malfeasance and inequality, both in Latin America and globally. PODER understands State capture as “A situation where powerful actors within and/or outside a country systematically, through both legal and illegal means, shape the design and enforcement of a country’s policies, laws, and regulations in ways that benefit their interests but have non-developmental outcomes for the rest of the country’s economy and society.”¹⁵

Insofar as corporate capture, PODER defines it as follows: “The [corporate capture of the State] describes the process by which economic elites represented by large companies, law firms, banks, and other financial investors use their social ties and ownership links — reflected in the interconnections between companies and entrepreneurs through interlocking directorates — to create networks of support with politicians and public officials, thus capturing the exercise of government and the formulation of public policies.”¹⁶

Embedded in PODER’s definition is a broader set of elites — economic service providers, financial institutions, and investors — that contribute to and benefit from capture practices. Also, PODER introduces another modality — corporate interlock through overlapping board directorates — through which capture occurs, arguably the predominant form in Mexico and a handful of countries worldwide.¹⁷

¹⁴ “Manifestations of Corporate Capture,” ESCR-Net, n.d., www.escri-net.org/corporateaccountability/corporatecapture/manifestations-corporate-capture.

¹⁵ 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.

¹⁶ 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>. Pg. 19.

¹⁷ 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>.

Finally, here at Empower, also based in Mexico, we situate the corporate capture of the State as a feature of advanced capitalism.

Economic systems worldwide — capitalism and its many forms, notably crony capitalism — were designed by powerful architects to optimize shareholder returns to the exclusion of broader stakeholder interests and externalities.

These designs reflect the direct and indirect influences of economic and political elites over public decision-making at all levels of the State.¹⁸ (...)



Since the industrial revolution, the deepening of capitalism — known as advanced capitalism — has been associated with the corporatization of public goods and services, the concentration of wealth, and decay in the form of economic crises requiring State intervention. Post-modern development has been marked by successive waves of austerity, privatization, and — more recently — financialization.¹⁹ (...)

The determining factor contributing to the capital shift from public to private markets is none other than the presence or absence of the State. **If ours were a statistical model, the dependent variable in our exercise would be the extent to which governments, legislatures, and courts inhibit or contribute to this shift. In our analogy, the independent variable would arguably be the pressure that capitalists exert on the State to optimize their return on investment, which, in capitalism, is constant as new markets and greater returns are relentlessly sought.** The State-capital duality and the policies that, by action or omission, determine our economic system are fundamental to understanding the capital shift.

The relationships between capital, capitalists, and States are well-documented. Scholars across myriad academic dis-

¹⁸ Runaway Train: The Perilous and Pernicious Path of Private Capital Worldwide, Empower, 2021. <https://empowerllc.net/en/issues/private-capital>. Pg. 13.

¹⁹ *Ibid.* Pgs. 22-3.

ciplines have theorized about it, studied the political economy of individual and firm-level connections, noted business politics as a particular form of capitalist participation in public decision-making, and recognized the autonomy of political actors and public officials as a class separate from workers and owners and thus individually susceptible to outside influence. Over the last two decades, a subset of these scholars has expounded upon political economy theories to apply a new lens — alternately known as State capture, corporate capture, or regulatory capture studies — to better understand how capital, capitalists, businesses, and businesspeople influence the State based on their particular (arguably class-based) ideologies, incentives, and interests. Independently of which vantage point is most compelling, there is broad agreement that all types of actors attempt to define and shape the common good and that, in our current economic and political system, capitalist pressure on the State is a constant.



Joel Hellman, Geraint Jones, and Daniel Kaufmann, who coined the term “State capture” in 2000, “[D]istinguish between three types of relationships marked by different distributions of rents between the firm and the state — state capture, influence and administrative corruption. State capture is defined as shaping the formation of the basic rules of the game (i.e. laws, rules, decrees and regulations) through illicit and non-transparent private payments to public officials. Influence refers to the firm’s capacity to have an impact on the formation of the basic rules of the game without necessary recourse to private payments to public officials (as a result of such factors as firm size, ownership ties to the state and repeated interactions with state officials). Administrative corruption is defined as private payments to public officials to distort the prescribed implementation of official rules and policies.”

We argue that **corporate capture** is an apt description of our independent variable (the pressure that capitalists exert on the State), as it encompasses the shaping and implementation of the rules of the game with or without private payments, as well as broadly characterizes business influence over public decision-making, including regulation, legislation, and judicial interpretation by State actors.²⁰

Ultimately, we define the corporate capture of the State as the influence exerted, whether through legal or illegal means, by an economic elite — particularly large corporations — over State functions, policies, laws, and resources.



This relentless pressure leads to the consolidation of corporate power, extending beyond small-scale corruption, and results in economic benefits for the wealthy while undermining the public interest. This concept shifts the focus from the State as the object of capture to the corporation (or economic interest) as the subject exerting undue influence. This phenomenon has negative implications for democratic governance worldwide and particularly exacerbates issues of underdevelopment, income inequality, and human rights violations in the Global South.

²⁰ *Ibid.* Pgs. 53-4.

2.1.2 State capture is the paradigm

If “corporate capture” is a niche term, “State capture” is practically a household name by comparison. Certainly, if our interviews and literature review are any indication, this latter term — focusing on the object of capture versus the subject doing the capture — is far more common. This ubiquitousness, it seems, tends to cause State capture to default for corporate capture, when perhaps this latter, more specific reference is often more apt. Also, while the use of corporate capture provokes an allergic reaction from regulators and businesspeople alike, the term “State capture” is more widely deployed across all sectors.

As mentioned, three economists — Joel Hellman, Geraint Jones, and Daniel Kaufmann, then at the World Bank, Massachusetts Institute of Technology, and The University of the Philippines Diliman / The Brookings Institution, respectively — coined the term “State capture” in 2000.²¹ Their work was foundational and continues to be the du jour characterization of the phenomenon. While all three continued contributing academic work to the field, Kaufmann in particular stands out for his dual role in civil society, where he led the organization Revenue Watch, which today is the Natural Resource Governance Institute (NRGI), and was a founding board member of EITI.

Today, the World Bank continues to study State capture, notably characterizing it as a root cause of corruption worldwide. For example, Andreas Fiebelkorn, a Bank economist, describes it as “[T]he exercise of power by private actors — through control over resources, threat of violence, or other forms of influence — to shape policies or implementation in service of their narrow interest. (...) The essence of state capture lies in a distinct network structure in which corrupt actors cluster around particular public organs and industries. Particularly prone to rent-seeking behavior are industries that are not or less exposed to competition such as in the electricity, water, oil, and the extractive sectors as well as nontradables (e.g., real estate construction) and generally high rent sectors (e.g., transport and telecommunication). (...) The rationale behind state capture is the following: connected firms influence public institutions (e.g., government officials, members of parliament, local governments, and customs or tax authorities) that either alter the design of laws and regulations or apply practices that allow connected firms to systematically receive benefits.”²² Interestingly, as of 2019 and in concordance with the subject (private actor) — object (public official) duality, Kaufmann, Fiebelkorn, and their colleagues began to marginally recognize the role of businesses, albeit focusing less on capture behavior and more on the undesired corruption outcomes it produces.

²¹ Joel Hellman, Geraint Jones, and Daniel Kaufmann, “Seize the State, Seize the Day. State Capture, Corruption, and Influence in Transition,” Policy Research Working Paper, 2444, (The World Bank: September 2000), www.openknowledge.worldbank.org/bitstream/handle/10986/19784/multi_page.pdf?sequence=1&isAllowed=y.

²² 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. 5, 7, and 11.

The scholar Elizabeth David-Barrett, currently director of the Centre for the Study of Corruption at the University of Sussex and head of the Global Programme on Measuring Corruption at the International Anti-Corruption Academy (IACA), also provides a useful definition of State capture. She describes it as “a type of systematic corruption whereby narrow interest groups take control of the institutions and processes through which public policy is made, directing public policy away from the public interest and instead shaping it to serve their own interests.”²³ Commonly assumed distinctions suggest that the purpose of the capturing group varies based on whether it is an economic or political elite — “oligarchs” seeking to acquire state assets in the former case and “kleptocrats” trying to maintain power and ensure impunity in the latter. However, the author contends that State capture operates by erasing the boundaries between economic and political power and building strong connections between both kinds of elites.

In October 2023, three State capture scholars — Elizabeth David-Barrett, Daniel Kaufmann, and Juan Camilo Ceballos — published “Measuring State Capture,” a long-awaited prelude to an on-going effort to, well, measure State capture. The authors state clearly that their work focuses on grand corruption — often a synonym for State capture — and not administrative or petty corruption. While an important development, which increasingly though yet somewhat marginally accounts for aspects of corporate capture, their focus continues to be on the demand (the object of capture) versus the supply side (the subject of capture, in other words private interests such as corporations).²⁴

In a 2020 study, Oxford Policy Management recognizes the role of business interests and economic service providers, and allows for the possibility of illicit interests as subjects of State capture:

In this paper, we refer to state capture as: a situation where powerful actors within and/or outside a country systematically, through both legal and illegal means, shape the design and enforcement of a country's policies, laws, and regulations in ways that benefit their own interests but have non-developmental outcomes for the rest of the country's economy and society. This definition has a number of distinguishing features. First, and in contrast to the other definitions above, it allows for systematic influence to happen through both legal and illegal means.

²³ Elizabeth David-Barrett, “State Capture and Development: A Conceptual Framework,” *Journal of International Relations and Development*, 26, 2023, <https://link.springer.com/article/10.1057/s41268-023-00290-6>. Pg. 224.

²⁴ Elizabeth David-Barrett, Daniel Kaufmann, and Juan Camilo Ceballos, “Measuring State Capture,” Global Programme on Measuring Corruption, hosted by the International Anti-Corruption Academy (IACA), October 2023, www.iaca.int/measuring-corruption/wp-content/uploads/2023/10/GPMC_Measuring_state_capture_19102023_online.pdf.

This aspect was emphasized as an important element by many respondents interviewed for this study. Second, it expands focus to a variety of actors (not only firms and public officials) and the involvement of non-domestic players (such as foreign professional services firms). Third, it restricts focus to processes that have non-developmental outcomes for wider society. The latter point distinguishes state capture from so-called “developmental patrimonialist regimes,” which involve the centralized generation and management of economic rents that has distinguished the more developmental regimes of Asia and Africa.

To avoid the concept of state capture from becoming too expansive, we propose not to include geopolitical influencing between countries, such as when China and its state owned enterprises influence policy, legislation and enforcement in African countries. **State capture is a multifaceted phenomenon.** It can take on a variety of characteristics depending on who is involved, how capture is done, where it happens and its effects on elites and wider society. (...) Rather than seeing state capture as a binary question (“is a state captured or not?”), it is useful to approach the issue as a sliding scale where a particular state (or parts of it) can be more or less captured on certain dimensions.²⁵



²⁵ Kari Selander, Søren Vester Haldrup, Dwi Rahardiani, Mark Beare, and Rose Mosi, "State Capture in Extractives: Characterizing the challenge and assessing possible responses," Oxford Policy Management, June 2020.

The innovation in this description is its plasticity. In other words, the relativity of the “sliding scale” insofar as different characteristics, modalities, relationships, and impacts are concerned enables a wider, more varied understanding of State capture as something more than rent-seeking behavior.

The term “State capture” has evolved and now includes both a recognition of economic elites and enough plasticity to help explain and even predict a variety of outcomes. The main difference with the term “corporate capture” is that the latter zeroes in on who — companies and businesspeople, economic service providers, investors, illicit actors — practices capture (versus what is captured). While both terms are useful and share significant overlap, Empower’s interviewees made clear that “calling out” perpetrators of capture is a non-starter for circumspect regulators and businesspeople, whereas rightsholders and their civil society advocates are eager to call to account the beneficial owners and intellectual authors behind the economic interests that benefit from and perpetrate capture, which violates human rights and undermines the common good.

2.1.3 Political capture matters in the Global South

Incidentally, across all of our interviews with civil society, business, and government actors, particularly in these countries themselves, both India and South Africa stood out as important exceptions to the State capture vs. corporate capture (object vs. subject) dichotomy. Both Indian and South African interviewees mentioned their countries’ relatively recent colonial legacies: the British in the case of India and the Dutch followed by the British in the case of South Africa. In both cases, as well as in Brazil and Mexico, interviewees described their States as having been “born captured.” For example, the oppressive commercial and extractive activities of the East India Company and the Dutch East India Company shaped the economic, political, and social systems of India and South Africa, respectively, embedding capture as a default practice.

In both countries, interviewees referred to the political capture of the State as the *du jour* form of capture. Instead of pure rent-seeking behavior, the argument is that elites of all kinds seek political influence above all in order to use the apparatus and resources of the State to consolidate political power. In Mexico, President Andrés Manuel López Obrador (2018-24) shares this viewpoint as well. The thinking is that North-South interventions are an expression of neo-colonialism. Consequently, domestic corporate capture of the State, for example, though it occurs, is less of an existential threat for these countries than North-South interference. The response is to seek strong political control to thwart neo-colonialism. Certainly, India, South Africa, and Mexico are not alone in their thinking. South-South-led geopolitical initiatives, such as the Community of Latin American and Caribbean States (CELAC) and the Brazil, Russia, India, China, and South Africa alliance (BRICS), have proliferated since 2010.²⁶

²⁶ In January 2024, Saudi Arabia, Egypt, the United Arab Emirates, Iran, and Ethiopia also joined BRICS. See: “BRICS expansion: five countries join ranks,” *Africanews*, 2 January 2024, www.africanews.com/2024/01/02/brics-expansion-five-countries-join-ranks.

Arguably, a pronounced focus on State capture by specific political elites ignores how businesses, investors, and economic service providers, especially domestic firms, use capture for private interests.²⁷ In South Africa, despite evidence to the contrary, State capture is viewed as a foreign import, where public attention has overwhelmingly focused on the Gupta family, who immigrated to South Africa from India in the 1990s.²⁸ It has come to be perceived as a means of capital accumulation by foreign capitalists and monopolies, similar to what occurred during the Apartheid era.²⁹

In 2022, the Zondo Commission exhaustively investigated accusations of corruption between the Guptas and the administration of former President Jacob Zuma (2009-18). “The [Zondo] Commission ultimately found that state capture did indeed take place in South Africa, ‘on an extensive scale.’”³⁰ However, neither the Public Protector nor the courts in South Africa defined the concept, which does not exist in South African law. Instead, the Zondo Commission defined it as follows:

“State capture in the South African context evolved as a project by which a relatively small group of actors, together with their network of collaborators inside and outside of the state, conspired systematically (criminally and in defiance of the Constitution) to redirect resources from the state for their own gain. (...) To a large extent this occurred through strategic appointments and dismissals at public entities and a reorganisation of procurement processes. (...) The process involved the undermining of oversight mechanisms, and the manipulation of the public narrative in favour of those who sought to capture the state.”³¹

The Public Affairs Research Institute (PARI), a South African civil society organization that closely monitored and participated in the Zondo Commission proceedings, also uses the term “State capture” instead of “corporate capture.” Devi Pillay, a PARI researcher, explains that the former concept is now a mainstay of the public discourse, where it refers more to politicians than corporations. She recognizes that South Africa has a blindspot when it comes to corporate capture: “A lot of corruption that has been

²⁷ “State capture’ is deeply woven into the fabric of the country’s history and it is not surprising that its latest manifestation has again revealed systematic attempts by private actors to repurpose public institutions for their own benefit. The power of corporate actors comes partly from access to cold hard cash, and their resulting ability to buy influence with politicians and capture or undermine regulators.” See: “Corporations and Economic Crime Report. The Bankers,” Open Secrets, November 2018. www.opensecrets.org.za/cecr-vol-1-the-bankers. Pg. 5.

²⁸ Representative of the management team, Centre for Applied Legal Studies (CALs) (South Africa), Interview on 21 September 2023.

²⁹ “In another use of the term, state capture is diversionary: this pins the blame for mounting setbacks in the country on ‘white monopoly capital’. The latter phrase is coded language for the centuries-old white elite, which, so the logic runs, ‘captured’ the state from the arrival of the first Europeans in 1652. (...) Used in this way, the term ‘state capture’ is an insult reserved particularly for whites who are said to have enriched themselves through the exploitation of black people under colonial domination and/or apartheid.” See: Mbongiseni Buthelezi and Peter Vale, “Introduction Understanding and Explaining State Capture”, in Mbongiseni Buthelezi and Peter Vale (Eds.), *State Capture in South Africa. How and why it happened*, Wits University Press, 2023. Pgs. 5, 8.

³⁰ Devi Pillay, “The Zondo Commission: A bite-sized summary”, Public Affairs Research Institute, August 2022. Pg. 3.

³¹ *Ibid.* Pg. 3.

made public involves benefits for politicians and their families. And the enterprises that are studied are State-owned enterprises. The national conversation centers on the people with positions of power and on the patronage networks around political parties. Corporations have not been the focus.”³²

In India, the political capture of the State made front-page headlines in 2023, including attempts to silence philanthropic and civil society organizations.³³ The Adani Group, the country’s most prominent private company, has been inextricably linked to Prime Minister Narendra Modi (2014-present) ever since the newly-elected prime minister used Adani’s corporate jet following his election. “Gautam Adani has long been accused of benefiting from his powerful political connections. His relationship with Modi dates back to 2002, when he was a businessman in Gujarat and Modi was chief minister of the state, and their rise has appeared to happen in tandem since.”³⁴

Since then, the Adani Group has grown enormously, thanks in no small part to public contracts, sometimes anonymous share buybacks, and a series of murky offshore transactions. “During Modi’s time as leader, the power and influence of the Adani Group has soared, with the conglomerate acquiring lucrative state contracts for ports, power plants, electricity, coalmines, highways, energy parks, slum redevelopment and airports. In some cases, laws were amended that allowed Adani Group companies to expand in sectors such as airports and coal. In turn, the stock value of the Adani Group rose from about \$8bn in 2013 to \$288bn by September 2022.”³⁵

Unlike the South African case, investigations into the Adani-Modi relationship and alleged improprieties have been weak. “The ability of the [Securities and Exchange Board of India], a regulator under the purview of the Modi government, to independently investigate the Adani Group has recently been called into question by critics, lawyers and the political opposition.”³⁶

According to corporate accountability advocate and journalist Bobby Ramakant, political capture is endemic to India. “The notion of State capture may be different [here]. It’s not political power but rather political influence that’s sought. The political apparatus is not really a democracy. There’s a limit for maximum spending in elections, but actual

³² Devi Pillay, Researcher, PARI, Interview on 4 September 2023.

³³ “Indian billionaire Gautam Adani’s conglomerate has slammed what it described as ‘Soros-funded interests’ after media outlets claimed the Adani Group had used complex and secretive offshore operations to boost its market value, citing documents obtained by a network of investigative journalists.” See: Mark Thompson, “Adani blasts ‘Soros-funded interests’ after media raise new questions about business empire,” *CNN*, 1 September 2023, <https://edition.cnn.com/2023/09/01/business/adani-soros-india/index.html>.

³⁴ Hannah Ellis-Petersen and Simon Goodley, “Modi-linked Adani family secretly invested in own shares, documents suggest,” *The Guardian*, 31 August 2023, www.theguardian.com/world/2023/aug/31/modi-linked-adani-family-secretly-invested-in-own-shares-documents-suggest-india.

³⁵ *Ibid.*

³⁶ *Ibid.*

spending is way above that. The whole electoral system is financed by dark money that comes from corruption or corporations. Corporations use the political apparatus to serve their interests. The political parties and the State depend on dark money. Politicians themselves are very rich, billionaires even, who own investments in mining, the education sector, etc. And these aren't even the top corporations such as Adani.”³⁷

If the State capture — corporate capture dichotomy can stretch further, political capture of the State, including cases such as South Africa, India, Mexico, and Thailand, to name a few, should factor into our understanding. In other words, the rent-seeking behavior in the private interest is not an exclusive motivation for capture; oftentimes political influence and lining one’s pockets can go hand in hand.

2.1.4 Methodological challenges of capture

The primary methodological challenges of understanding and defining – not to mention identifying and stopping — the corporate capture of the State are:

- **Conceptualization:** The lack of uniformity about the concept of “capture,” let alone its different typologies and manifestations, is arguably the greatest obstacle to tackling the problem of corporate capture. Other studies have also observed this. According to PODER, “Many interviewees answered [our corporate capture inquiries] saying that the fundamental problem is ‘corruption.’ The weight they placed on ‘capture’ was very low. In civil society, the weight we assign to ‘capture’ is greater. Referring to ‘capture’ makes businesspeople and regulators uncomfortable. For example, the private sector prefers to refer to ‘exceptional’ cases of corruption, or to lobbying influence, rather than recognize the phenomenon as such. Businesspeople are reluctant to recognize that their capture efforts as a sector have achieved favorable conditions for their interests.”³⁸

The almost nonexistent use of the term “corporate capture” appears to contribute to the framing of a dominant narrative in which the proximity between economic and political elites is absent from the public debate, and where it has come to be accepted as common sense that whatever is good for industry must be good for a country and its people.³⁹

- **Lack of research and the “black box problem”:** Generally, as a corporate accountability movement, we lack data, transactional evidence, and methodologies to

³⁷ Bobby Ramakant, Policy Director, Citizen News Service (India), Interview on 8 September 2023.

³⁸ Oscar Pineda and Daniel Castrejón, PODER, Interview on 31 July 2023.

³⁹ “Corporate Capture in Europe,” Alliance for Lobbying Transparency and Ethics Regulation in the EU (ALTER-EU), September 2018, www.alter-eu.org/sites/default/files/documents/corporate_capture_web_1.pdf. Pgs. 8-10.

identify, track, and measure capture.⁴⁰ Without this, we have a black box problem: simply put, how do we know if capture happens if there's no proof? In other words, without documents, witnesses, or transactional evidence, how can we identify capture? Andreas Fiebelkorn at the World Bank has given this problem some thought:

“To begin with, a rigorous one-size-fits-all method that accurately analyzes the full dimension of state capture seems not only impossible but impractical, given that state capture takes various forms, with different impacts on development. Instead, methodologies must be adapted and should focus on the particular issue that seems most detrimental to development in the respective context, or from an operational point of view, most detrimental to the success of the development project. (...) While existing efforts to quantitatively assess capture behavior differ significantly in their approaches — depending on context, interest, and data availability — they share a common analytical framework. (...)”

Thus, empirical evidence of state capture requires cross-validating three data components:

- **Political connections:** Who is connected with whom and to what degree? Data collection involves identifying the set of actors, firms, and interests capable of capturing various policies for their own benefit. It provides the basis to build a dataset on political connections and analyze the influence of firms on public institutions.
- **Capture mechanism:** What are the mechanisms through which politically connected actors receive policy favors? These data allow [us] to analyze the *de facto* practices and *de jure* rules that potentially provide connected firms or specific industries with benefits.
- **Firm-level indicators:** What is the impact of capture? These data allow [us] to measure the performance differences between connected and nonconnected firms, as evidence of a political connection premium.”⁴¹
- **Vantage point:** Is an economic actor (the subject) seeking to influence the State for private interest, or are governance, rule of law, and other facets of the State (the object) succumbing to corruption? Some focus on the perpetrators, sensing

⁴⁰ As this report was being finalized, three State capture scholars — Elizabeth David-Barrett, Daniel Kaufmann, and Juan Camilo Ceballos — published “Measuring State Capture.” This first-of-its-kind publication was the result of a May 2023 “think-in,” sponsored by the IACA, which sought precisely to tackle and find a work-around to the black box problem. See: “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/.

⁴¹ 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.

“corporate capture.” Others focus on the corruption of the State, calling this “State capture.” Yet others focus on the human rights impacts and environmental harms, for example, caused by capture at the community level. And others still look neither at the economics or the corruption, but rather at the undermining of national sovereignty. The answer lies in the eye of the beholder. Oftentimes, the answer is “yes, and,” or the possibility of two or more things being true at once.

- **Supply and demand:** In economic terms, the supply side of corruption is typically the actor that commits capture (e.g. pays a bribe) and the demand side is the actor who is corrupted and allows capture to occur (e.g. accepting a bribe). But when no money exchanges hands as in the case of non-economic pressures, such as regulatory chill or dissuasion measures, the supply-demand relationship becomes harder to quantify. An economic calculus alone is insufficient, yet how can we gauge influence and power?
- **Drawing the line:** The difference between small-scale corruption — for example, the headline “Corruption aiding death of forests in Malawi: How Forest, Police, and MRA officials help charcoal smugglers in exchange for bribes”⁴² — and large-scale corruption — the Lava Jato (“Carwash”) bribery scandal that rocked Brazil and Latin America — is abysmal. Are both instances of capture? Do our understanding and methodologies hold up in both accounts?
- **Illicit private interests:** Technically, the term “corporate capture of the State” refers to legal private interests promoting capture activities. However, when those private interests are illicit — for example, a criminal organization or the corporate facade of the same — yet have a corporate component, does this enter into our analysis? Similarly, when the object of capture is illegal, for example the use of State security forces to commit corporate-sponsored human rights violations, are we taking this into account? Across both questions, the answer from the Global South is a resounding “yes.”
- **“Capture” is insufficient:** Some argue that the concept of “capture” does not fully explain why private gain or political influence is sought. Instead, the unit of analysis should focus on the different actors involved in capture: economic elites, political elites, armed groups and other illicit actors,⁴³ etc., essentially all who engage in corruption to maintain an economic model that privileges them and influences State decision-makers at the expense of human rights.⁴⁴ To better understand the

⁴² Bobby Kabango, “Corruption aiding death of forests in Malawi,” Platform for Investigative Journalism (PIJ-Malawi), 30 January 2021, www.investigativeplatform-mw.org/2021/01/corruption-aiding-death-of-forests-in-malawi.

⁴³ Dawid D. Bartelt, Rodolfo Aguirre, Marco Pérez Navarrete, and Ingrid Wehr, Eds., *Poder Fácticos: Captura del Estado, redes criminales y violencia en América Latina*, Fundación Heinrich Böll (Colombia), December 2022, https://co.boell.org/sites/default/files/2023-06/web_poderes-facticos-b.pdf.

functioning of these systems of corruption, individual motivations and actions must be examined in a situational light, enabling the mapping of power structures. A broader analysis runs the risk of oversimplification.

Now that we have compared and contrasted a variety of perspectives on capture, ranging from the corporate perpetrator and their private interests, through the impact of such corruption on the functioning of the State and the public interest, to the role of political influence and sovereignty as a motive, we turn our attention to a synthesis of the key findings of this global horizon scan on corporate capture. We discuss the challenges it poses, gaps in its regulation, latent opportunities to correct course, and even strategies and innovations that are already making a difference in various regions of the world. As mentioned, a separate reference document complements this report, offering an in-depth explanation of our research findings. There, readers can explore topics, cases, and organizations of interest in much greater detail. Before delving into our main findings, we provide a brief overview of the methodology used to reach these outcomes.

2.2 About Empower

Founded in 2013, Empower, LLC⁴⁵ 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,⁴⁶ 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.

⁴⁴ The corporate capture of the State is "a corrupt action undertaken by a particular agent who leverages their economic power to access the political sphere of the State, with the aim of preserving a model that privileges them and/or pressuring decisions that favor their selfish interests." See: 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. 15.

⁴⁵ Contact information: E-mail info@empowerllc.net, Web <https://empowerllc.net/en>, and Twitter @EmpowerLLC.

⁴⁶ <https://empowerllc.net/en/social-commitment>.

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.

3.

METHODOLOGY



3.

METHODOLOGY



A team of two Empower researchers spent the latter half of 2023 and early 2024 conducting a global horizon scan about corporate capture, with a focus on the Global South, as well as on the financial sector, climate issues, and the energy transition. We set out to understand the state of the field as well as the opportunities, strategies, and innovations within civil society, government, and business to tackle this phenomenon.

Our main lines of inquiry were: firstly, the challenges posed by corporate capture, encompassing its most common manifestations as well as the obstacles to combat it; secondly, the gaps between what should be working now given current legislation and regulation to curb corporate capture and what is actually happening (e.g. lack of enforcement); thirdly, the opportunities for action where national and multilateral authorities can intervene to address the phenomenon; and finally, the strategies and innovations being implemented by civil society to address and stop the corporate capture of the State, including tactics and tools with potential for scalability and replicability. These four categories guided our research and form the framework for both this report and the companion reference document.

We designed a simple, informed and effective methodology to generate and analyze the greatest quantity and quality of useful information considering available resources. While there is room to expand the scope of methods and tools that can be used to research these issues, we chose our methodology in favor of those components that would provide the most comprehensive results, considering budget and time constraints.

To be clear, at Empower we stand on the shoulders of those who conduct the work firsthand, such as scholars, researchers, policymakers, civil society organizations, social movements, and other stakeholders who have generously offered lines of thought and practical solutions to help us — as a corporate accountability movement — move the needle towards a new economic paradigm with progressive industrial policy, a just energy transition, fair markets, and meaningful corporate accountability.

We would like to emphasize that the examples provided throughout this report are not exclusive of other experts, scholars, regulators, or civil society organizations. It is a certainty that other individuals or groups are using similar approaches to this work, or are implementing strategies or innovations that we did not uncover. If anything, we kindly ask that these people contact us at info@empowerllc.net so that together we may improve our research and grow as a corporate accountability movement in general.

3.1 Interviews

Empower contacted and interviewed dozens of experts — primarily from the Global South — using a semi-structured format, interview questionnaire, and free-flowing dialogue, which allowed us to detect and raise up the most relevant points for this report. When selecting experts, Empower considered the following criteria:

- The relevance and timeliness of their knowledge and experiences regarding corporate capture. Priority was given to those who had practical experience tackling this issue.
- Their availability and accessibility to participate, whether in person, virtually, or in writing. While 24 experts participated, a dozen additional experts were unable to or declined to participate.
- Diversity: We divided sources between destination (host) countries/regions in the Global South where investment and human rights violations tend to occur and home countries/regions in the Global North where multinationals tend to be based, including using non-English sources as available. In this regard, we prioritized research in Latin America, Africa, and South/Southeast Asia. We also prioritized cross-regional trends, wherever relevant. In particular, we also emphasized the inclusion of marginalized and oppressed groups due to race, ethnicity, indigenous origin, gender, sexual orientation, gender identity, age, geography, and socioeconomic/class status.
- The credibility and reliability of their information and experience. In all cases, Empower verified the relevance of their careers, positions held, publications, and references.

During the interviews, we employed the principles of no harm and informed consent, as well as anonymity and confidentiality if preferred, to ensure the quality and reliability of the information. If anonymity was requested, it was automatically granted and the information collected was cataloged in separate servers in order to protect the integrity of sources.

Subsequently, Empower processed — and translated, if necessary — the information to categorize and store it according to our main lines of inquiry (challenges, gaps, opportunities, and strategies and innovations) in order to highlight key findings, as cited throughout this report.

3.2 Literature review

Empower conducted an expansive literature review, collecting and reading hundreds of documents — mainly from the Global South — before ultimately deciding to include approximately 200 reports, articles, book chapters, etc.

The principles that guided the literature review led us to useful information for identifying the challenges, gaps, opportunities, strategies and innovations — the state of the field, as it were — discussed throughout this report. The literature review was:

- **Exhaustive:** Empower included all relevant primary and secondary sources — primarily from the past five years — that we could find on the topics at hand or adjacent proxies in their absence. We aimed to incorporate perspectives from civil society, academia, the private sector, and both national and multilateral public institutions.
- **Analytical:** We sought not only descriptive sources but also prescriptive ones that discussed where we are going as a field. The diversity, quality, validity, relevance, and rigor of the sources consulted were compared, contrasted and evaluated in each case.
- **Coherent:** Using tailored software products, we organized and summarized the information using a relational database with geographical, sectoral, and thematic tags. This process was logical and consistent, helped us identify main ideas, gaps, trends, findings, and recommendations.

Following these principles and, upon comparing and contrasting the literature review with the interviews, we were able to discern the theoretical contexts and state of the art for corporate capture in the Global South.

3.3 Analysis

Empower grouped all information collected into a relational database, which was organized by type of source, geographic origin, whether it serves to conceptualize a problem or a proposal, whether it identifies a potential intervention or accountability

opportunity, and the section of this horizon scan to which it would best contribute. In each case a bibliographic citation was generated for further reference.

To analyze a phenomenon as complex and multidimensional as corporate capture, we chose to carry out a systemic approach and gap analysis. We analyzed the gathered information with emphasis on the behavior and dynamics of the systems observed, identifying the causal factors, effects, impacts, challenges, and opportunities that arise within the systems. Gap analysis was applied in conjunction with the systemic approach in order to evaluate the current state versus the ideal state of the phenomenon, as well as to design strategies tailored to reduce or eliminate existing gaps. Whenever possible, we sought case studies, specific mentions, and concrete examples of problems and interventions for change.

The systems to be studied were defined as the set of elements, relationships, processes, actors, contexts, and influences that are responsible for or respond to corporate capture: large corporations, governments, the media, regulatory bodies, consumers, workers, communities, civil society organizations, and social movements, among others.

Empower undertook the task of identifying the gaps between the current state and the ideal state, that is, the challenges/gaps and opportunities/resistances that arise within the system. We also addressed specific strategies to significantly reduce the identified gaps, that is, specific projects and actions, resources, those responsible, and the mechanisms that can be applied to improve the results of the system.

If the strategies and innovations identified have been implemented or scaled, future endeavors could evaluate and monitor the impact of the actions proposed.



4.

**CORPORATE
CAPTURE OF
THE STATE:
KEY FINDINGS**



4.

CORPORATE CAPTURE OF THE STATE: KEY FINDINGS



As a corporate accountability movement, we find ourselves in a decisive moment, straddling an abyss between our past and future. Behind us are decades if not centuries of advanced capitalism and neoliberalism, whose uneven and unequal results have not served the common good. Ahead lies a new economic paradigm, where progressive industrial policy, a just energy transition, fair markets, and meaningful accountability hold so much promise. And below us, threatening to swallow us whole, is boundless corporate power, at once a product of the corporate capture of the State as well as market concentration.

If, as a movement of advocates and rightsholders, we are to transform our political economies, we must ask ourselves key questions about the path forward:

- 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?

Empower’s primary contribution to addressing these questions was to conduct a horizon scan focused on the Global South, with an eye towards opportunities in the energy and finance sectors, about a key obstacle blocking our collective path forward: the corporate capture of the State.

In the key findings that follow, we distill the challenges and gaps, as well as the opportunities, strategies, and innovations, interwoven throughout our research. In doing so, we analyze and synthesize these ideas, compare and contrast diverse measures, and extrapolate from isolated examples to explore what's possible in other sectors and geographies. In a separate reference document that complements this report, readers can delve deeper into these findings and expand their understanding with multiple examples and references from our interviews and literature review. There, one can consult a detailed description of the manifestations of corporate capture and the current strategic innovations for tackling it, which we present only in condensed form in this report. The accompanying document offers a more extensive overview of many of the organizations mentioned, as well as the vast majority of the sources we consulted. The present report offers a snapshot in time of the landscape — primarily in the Global South — as of January 2024.

As an overall recommendation for the corporate accountability movement when reading these key findings, we must not lose sight of our objective: to achieve economic justice and the fulfillment of human rights in a stakeholder economy that prioritizes the common good. Our overriding consideration for any opportunity or intervention to tackle and stop the corporate capture of the State should be whether the implementation prioritizes the rightsholder above all else. In other words, does the opportunity or intervention improve the human rights outcomes for the individual person or collective of persons affected by business conduct and/or State action or inaction? This guiding principle can help us discern between one opportunity or strategy and another, and remind us what to advocate for as we move forward.

4.1 Challenges and gaps

This section identifies and summarizes the challenges that corporate capture poses and the gaps preventing us from making systemic change. This important step in our horizon scan allowed us to gauge a baseline assessment from civil society, academia, regulators, and businesspeople about the state of corporate capture in late 2023 and early 2024.

4.1.1 Main challenges and gaps

Legal and regulatory frameworks: Some of the most significant challenges and gaps regarding corporate capture of the State are related to the lack of its definition and codification in legal and regulatory frameworks. The absence of legal recognition of the problem allows the phenomenon of capture to go unnoticed, leading to an inadequate understanding of the harms it causes. Moreover, significant legal and regulatory gaps still need to be addressed to effectively limit and counteract the effects of capture.

- **Capture is not codified into law:** With few exceptions, “capture” *per se* is not codified into law.⁴⁷ 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.

The absence of corporate capture from legal frameworks has led some to question its validity as a concept, given that it remains, largely by default if not design, within legal bounds. Legal frameworks are crafted to legitimize companies’ actions, eliminating the need to capture lawmakers, regulators, and judges who would otherwise be targets of capture. In addition to the legality of many capture practices, soft law, norms, voluntary practices, and similar mechanisms serve as important avenues for supply-side actors seeking to capture the State. The ineffectiveness of these tools, which often benefit corporations more than facilitating victims’ access to justice, has been widely criticized.⁴⁸

- **Lobbying and money in politics:** The dual challenges of money in politics and lobbying often take precedence among corporate accountability advocates when discussing the manifestations and methods of corporate capture. In 22 countries worldwide, lobbying is legal, while in the remaining nations “lobbyism is justified bribery” and is either prohibited or simply unregulated.⁴⁹ In the vast majority of the Global South, unregulated lobbying implies unrestricted freedom to influence State actors. In these countries, the corporate capture of the State — particularly through lobbying and political influence — occurs in a gray area. In a minority of countries, lobbying is recognized as corruption and is outlawed, further relegating it to the shadows.

A concurrent system is electoral politics, where corporations, individuals, and other entities contribute monetarily to candidates and parties, ostensibly under the guise

⁴⁷ Oscar Pineda and Daniel Castrejón, PODER, Interview on 31 July 2023.

⁴⁸ “Handbook of Proposals to Regulate Multinationals”, Sherpa, December 2021, www.asso-sherpa.org/handbook-of-proposals-to-regulate-multinationals. Pg. 31.

⁴⁹ “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>.

of free speech protections (e.g. the 1st Amendment of the U.S. Constitution). While some countries regulate donations to and spending in electoral campaigns, there are others where there are no restrictions on contributions and no limits on what candidates can spend.⁵⁰ However, even with regulation, money in politics can lead to clientelism, corruption, procedural favoritism, hand-picked public officials, and other outcomes that serve business interests rather than democracy.

- **Corporate liability and responsibility:** Despite significant legal and normative developments in the field of business and human rights, as of January 2024 there had been woefully little progress regarding new criminal liability for corporate-sponsored human rights violations and crimes, extraterritoriality (beyond some national laws with limited extraterritorial applicability), and access to meaningful remedies for rightsholders. For many years States did not acknowledge the concept of corporate responsibility because the private sector was supposedly incapable of violating human rights, resulting in a lack of a human rights culture within State bodies concerning corporate operations.⁵¹
- **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.”⁵²
- **Implementation and enforcement of due diligence legislation:** There is widespread skepticism in the Global South regarding the implementation and enforceability of European supply chain due diligence and similar laws, which stems from two main concerns. Firstly, to avoid neo-colonial imposition, these laws must authentically adapt to the realities of each extraterritorial jurisdiction. A significant gap exists due to the scarcity of due diligence laws in the Global South that mirror those in Europe (a one-size-fits-all approach will not work). Secondly, strategic litigation in host countries can have a significant impact in preventing harm and restricting certain industry practices, without necessarily being tied to due diligence legislation in home countries in the Global North. For example, in ProDESC's case against Électricité de France in Oaxaca, while the company ended up complying with France's due diligence law, litigation in Mexico revealed multiple gaps and was responsible for compelling the company to take its supply chain violations seriously.⁵³

⁵⁰ 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>.

⁵¹ Paloma Muñoz, BSR, Interview on 25 August 2023.

⁵² "Corporations and Economic Crime Report. The Bankers", Open Secrets, November 2018, www.opensecrets.org.za/cecr-vol-1-the-bankers. Pg. 6.

- **Judicial and procedural delays:** In terms of access to justice, significant gaps persist in expeditiously determining legal violations of human rights. These include lengthy judicial processes during which human rights violations persist; the lack of specificity in legislation — for example, how a European judge interprets whether a due diligence violation abroad is even considered a violation in the host country — often leads to rulings favoring companies; and reforms at the national level are not promptly codified and enforced sub-nationally.⁵⁴
- **Judicial interference:** When rulings favor communities, corporations often intervene to prevent their implementation. In Colombia, the Cerrejón company, owned by Glencore, provides a clear example of this phenomenon. 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. An emblematic case is the diversion of the Bruno Creek in La Guajira, a semi-desert area. Notwithstanding a court decision favoring the community and the environment, Cerrejón pressured the Colombian State with a lawsuit, taking it to international tribunals.⁵⁵
- **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.⁵⁶

Revolving door phenomenon: A primary example of how corporations capture the State is through the phenomenon known as the revolving door. This involves the movement of individuals between positions in private corporations and roles within the government, and vice versa.⁵⁷ The revolving door often leads to conflicts of interest, which are seldom disclosed, and undermines the impartiality of State institutions. This practice has become normalized and the risks associated with a public official previously working for a company, potentially prioritizing private interests in their governmental role, are rarely acknowledged.

⁵³ Alejandra Ancheita, Executive Director, ProDESC, Interview on 29 August 2023.

⁵⁴ Devi Pillay, Researcher, PARI, Interview on 4 September 2023.

⁵⁵ Luisa Rodríguez Gaitán, Coordinator, Democracy and Human Rights Program, Heinrich Böll Foundation (Colombia), Interview on 11 September 2023.

⁵⁶ "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.

⁵⁷ The Corporate Accountability Working Group (CAWG), an integral part of the ESCR-Net, defines the revolving door 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." See: "Manifestations of Corporate Capture," ESCR-Net, n/d., www.escr-net.org/corporateaccountability/corporatecapture/manifestations-corporate-capture.

Interlocking corporate directorates: This refers to members of corporate boards of directors serving on multiple boards simultaneously, thus creating a network of multiple directors and interlocking boards. This occurs worldwide and is a primary mechanism whereby corporations form business associations to lobby, influence, and capture the State.⁵⁸ 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. Although interlocking directorates are not inherently a manifestation of capture, the network they create leads to concentrated corporate power, which often serves as a precondition for capture.⁵⁹

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?⁶⁰

Since the 2010s, several organizations, including Open Ownership, Transparency International, and EITI, have engaged with dozens of governments worldwide to implement beneficial ownership reforms, including new laws and registries to disclose the true owners of corporations. However, this process has been slow. By 2022, 79 countries

⁵⁸ 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.” See: Benjamin Coker, “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>.

⁵⁹ Kees van Veen and Eelke M. Heemsker, “Interlocking directorate networks,” in Reda Alhaji and Jon Rokne (Eds.), *Encyclopedia of social network analysis and mining*, Springer, 2017, https://link.springer.com/referenceworkentry/10.1007/978-1-4939-7131-2_274.

⁶⁰ 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.” See: 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.

had beneficial ownership registration laws, but only a small subset — perhaps 15 at most — had implemented effective, transparent registries.⁶¹

Privatization and public procurement: A prime target of capture by corporations is the decision-making process concerning privatization and procurement matters. Privatization involves the transfer of traditionally government-run activities, such as public services or State-owned enterprises (SOEs), to the private sector, either partially or entirely. This process can take various forms, ranging from the complete divestiture of government assets and responsibilities to arrangements like public-private partnerships.⁶² Similarly, corporate capture targets public procurement to redirect resources from the public economy to private interests through lucrative public contracts.

Narrative and ideological capture: A common thread across the interviews and literature is the ubiquitousness and acceptance of capture as an economic, political, and social norm. It is often mentioned 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. For example, the capture of academic institutions — which, save select examples, is not well-studied⁶³— involves corporations funding research that legitimizes their operations.⁶⁴

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.

Agenda setting in international and multilateral spaces: 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.⁶⁵

⁶¹ Oscar Pineda and Daniel Castrejón, PODER, Interview on 31 July 2023. See also: 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>.

⁶² 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.

⁶³ “La Mafía de la Ciencia,” *Periodismo PODER*, 2019-20, <https://lamafiadelaciencia.poderlatam.org>.

⁶⁴ Luisa Rodríguez Gaitán, Coordinator, Democracy and Human Rights Program, Heinrich Böll Foundation (Colombia), Interview on 11 September 2023.

⁶⁵ 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.

The CAWG has 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.⁶⁶

Lack of adequate taxation: The main concerns regarding taxation are twofold. Firstly, how can a State adequately provide for social protection and welfare with reduced coffers? Secondly, if working people pay their taxes while corporations and the wealthy do not (or proportionately pay less), this 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."⁶⁷ This is known as State capture.

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."⁶⁸ We need not look far to find examples: Apple, Google, Starbucks, HSBC, Barclays, Shell, Unilever, etc.

⁶⁶ 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.escri-net.org/news/2021/background-document-corporate-capture-united-nations. Pg. 2.

⁶⁷ "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%." (...) "Only a State captured by the interests of certain elites can promote fiscal policies that increase poverty." See: 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.

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.⁶⁹

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.”⁷⁰

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 CSOs, the “Protect the Protest” Task Force, has led the resistance against these efforts.⁷¹

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

⁶⁸ James Chen, “Tax Arbitrage,” Investopedia, 25 November 2020, www.investopedia.com/terms/t/tax-arbitrage.asp.

⁶⁹ Sarojeni Rengam, Executive Director, Pesticide Action Network - Asia-Pacific, Interview on 7 September 2023.

⁷⁰ 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.

⁷¹ “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.” See: “About,” Protect the Protest Task Force, n.d., <https://protecttheprotest.org/about>. Accessed February 1, 2024.

stopped funding critical media outlets by withdrawing advertising contracts, leading to censorship and closure of news outlets.⁷²

Macro-crime and illicit interests: 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, the sources we consulted indicate that, not only should they be included, they are in fact commonplace actors in the supply-demand pipeline in both the Global North and South.⁷³ In Mexico, Empower has conducted considerable research on how the illicit financial flows of macro-crime — 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.⁷⁴

Development capture: This refers to influencing the decision-making of development agencies, leveraging development finance and diplomatic influence, for example, for private interests. It involves the collaboration and exertion of pressure by multinational corporations and States to ultimately control the decision-making of a less powerful country. Implicit in development capture is the vulnerability of the entity being captured, often a weak State that compromises its sovereignty in exchange for foreign investment or infrastructure projects.⁷⁵

Financialization and capture by the finance sector: The financial services sector, comprising banks, insurance companies, brokerages, investment funds, asset managers, private equity and hedge funds, some State-owned enterprises, and other eco-

⁷² 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.

⁷³ 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.

⁷⁴ 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." See: "Flujos ilícitos," Empower, n.d., <https://crimenesgraves.empowerllc.net>.

⁷⁵ A notable instance of development capture is exemplified by Oyu Tolgoi, Mongolia's largest mine. Leaked diplomatic cables exposed the involvement of Western governments pressuring the Mongolian State to prioritize the interests of multinational mining companies, such as Rio Tinto and Ivanhoe Mines. See: 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.

conomic service providers, shares a deeply intertwined relationship with the State. This connection dates back centuries, with entrepreneurs, companies, and investors relying on the State for credit and bailouts since the era of the transatlantic slave trade in the 1500s. It was during this period that the first corporations and monopolies received royal charters, granting them shipping rights that laid the groundwork for central banking, private banking, and venture capitalism — financial mechanisms that have been implicated in some of the most egregious human and labor rights abuses.⁷⁶

In the contemporary landscape, advanced capitalism, neoliberalism, and the phenomenon of financialization — characterized by the proliferation and empowerment of financial markets across various sectors of the economy and society — are deeply intertwined. At the heart of this dynamic lies the concept of the corporate capture of the State, which serves as the primary mechanism through which capitalists and their allies in government accumulate wealth and wield power through financial means. This process was facilitated by neoliberal policies that promoted privatization and led to the divergence between Main Street and Wall Street economies. Consequently, financial institutions such as banks and asset managers have come to occupy a disproportionately influential role in the financial economy, further underscored by the corporate capture of key State institutions, particularly central banks and economic policies.⁷⁷

4.1.2 Energy transition challenges and gaps

According to the Transnational Institute (TNI), a “corporate energy transition” implies preserving a paradigm based on wealth accumulation and unlimited economic growth in addressing the current climate crisis. This perspective aims to maintain existing power relations during the intended energy transition, where resources, machinery, projects, and scientific research remain under the control of large corporations.⁷⁸ This would constitute corporate capture of the energy transition.

Renewable energy transition: 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.⁷⁹ In this milieu we find the corporations themselves, essentially split between those benefiting

⁷⁶ *Runaway Train: The Perilous and Pernicious Path of Private Capital Worldwide*, Empower, 2021, <https://empowerllc.net/en/issues/private-capital>. Pg. 22.

⁷⁷ *Ibid.* Pgs. 15 and 34.

⁷⁸ “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. Pgs. 1-3.

⁷⁹ Mary Beth Gallagher, Head of Engagement, Domini, Interview on 31 August 2023.

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.

- **Conceptual capture of renewables:** Rhetorically, proponents of the renewable 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.
- **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.

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. 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.

State-owned enterprises: In the Global South, SOEs represent a significant portion of the largest companies in countries such as China, India, Indonesia, Malaysia, Russia, Saudi Arabia, and the United Arab Emirates, comprising at least 33% of their corporate landscape.⁸⁰ Within the context of the energy transition, SOEs play a pivotal role, influencing emissions reduction strategies, investment in low-carbon alternatives, and efforts to enhance resilience.⁸¹

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.

Climate finance: Concerning corporate capture, the substantial global climate financial flows estimated at 850–940 billion USD annually present numerous challenges. These encompass corruption, resource diversion, a dearth of transparency and accountability, and issues related to the revolving door phenomenon, where representatives of private interests influence institutions susceptible to capture. Simultaneously, additional issues arise, such as the unequal distribution of flows thus worsening economic inequality, the environmental and human rights consequences of the sector, and the entrenchment of fossil fuel companies and SOEs as they slowly, if at all, transition from climate finance to renewables. The enormity of these financial flows accentuates the complexity of addressing corporate capture within the context of climate financing.

Greenwashing and false solutions: For this horizon scan, a consistent theme throughout our interviews and literature review was 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,⁸² 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 in-

⁸⁰ "Strategy Horizon Scan on Corporate Accountability: Navigating Corporate Influence in the Climate and Energy Sector," Dalberg, 15 June 2023.

⁸¹ 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.

⁸² Gilles Grolleau et al., "Changing the world with words? Euphemisms in climate change issues," *Ecol. Econ.*, 2022, www.sciencedirect.com/science/article/abs/pii/S0921800921003669.

cineration, nuclear power, purely renewable energy, hydroelectricity, geoengineering, and carbon capture and storage (CCS) technologies.⁸³

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.⁸⁴ The most worrisome capture element of the GBA is narrative capture; national and international organizations from the U.S. Government to the International Labor Organization 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.

4.2 Opportunities

In this section, we identified opportunities for interventions at scale — mainly by States — to better orient governments and policy-makers about how they can contribute to ending corporate capture.

4.2.1 Main opportunities

Beneficial ownership disclosure: How do we know if capture happens if there's no proof? A prerequisite for any attempt to answer this question is data about who captures who or what, and how. In this regard, the Holy Grail of corporate and fiscal transparency is beneficial ownership disclosure — the name, nationality, and country of residence of the physical person or people behind any corporate entity regardless of its corporate, legal, or geographical peculiarities. The work of Open Ownership, Transparency International, EITI, and PODER, among others, to work with States to create beneficial ownership registries is fundamental.⁸⁵

⁸³ 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.

⁸⁴ "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.

⁸⁵ "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." See: "What is beneficial ownership transparency?" Open Ownership, n.d., www.openownership.org/en/about/what-is-beneficial-ownership-transparency.

Improve corporate disclosure, strengthen the right to know: Beyond the Holy Grail of transparency, there are numerous opportunities to improve corporate disclosure and strengthen the corresponding right to know. On the supply side of corporate capture (economic and other incentives to induce State capture), some good corporate transparency laws are already on the books, particularly in North America and Western Europe, allowing us to learn more about who captures and how; however, they lack enforcement and extraterritoriality. Also, Global South countries, particularly nodes of the global economy such as Brazil and South Africa that show glimmers of reform, can adapt similar legislation or reform their own laws. On the demand side (the people or entities being captured), improvements in fiscal transparency and freedom of information are opportunities for citizens to exercise their right to know about how the State is being captured.

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.

Warning systems to monitor red flags: Increasingly, anti-corruption measurement indices and metrics, as well as other information technology tools, are available to monitor, measure, visualize, report, and alert law enforcement and regulators, as well as CSOs and journalists, about pre-established red flags indicating acts of State capture. These warning systems — while still in development and not yet operational in real time — are an opportunity to improve and even automate our understanding of the corporate capture of the State. For example, when economic service providers (ESPs) and companies linked to a suspicious beneficial owner win a public contract, or someone linked to the beneficial owner in question becomes a public official, we could receive a report and act accordingly. Thanks to advancements in transparency and technology we are on the verge of being able to maximize this opportunity.

Financial regulation, including oversight: The mechanisms of financial legislation, regulation, and enforcement are prime objects of capture by private interests. With improved parliamentary and judicial oversight and civic engagement we can disincentivize corporate capture, close legal loopholes, and enforce laws while leveraging emerging disclosure and due diligence to monitor publicly-traded and privately-held corporations more effectively. Measures such as excise taxes on share buybacks, lobbying reform, broadening fiduciary duty to include environmental, social, governance, and other issues of stakeholder concern, tighter banking regulation, and ending revolving doors and similar practices that undermine regulatory independence are examples that can be adapted to other jurisdictions. Similarly, the roles of ESPs and financial intermediaries — the architects and bagmen for the beneficiaries of corporate capture — must be tightly regulated.

Transnational collaboration of financial intelligence units and prosecutors: Leaks such as the Panama Papers and Pandora Papers about offshore money laundering and tax evasion, or the scandals in Brazil and South Africa whereby offshore banking helped Odebrecht and the Guptas, respectively, to capture the State, revealed that prosecutors are often unable to track financial crimes across borders, especially with uncooperative countries. The Organization for Economic Cooperation and Development (OECD) and the United Nations (U.N.) generally comprise the international framework to combat illicit financial flows. However, there are coherence issues insofar as financial and related crimes are treated in different jurisdictions and mutual legal assistance is often lacking. In this regard, there is an opportunity to improve global regulatory coherence, as well as between and within countries, including promoting greater mechanisms and ease of transnational collaboration between prosecutors and financial intelligence units. Similarly, the politics of international asset recovery and transnational cooperation can be improved, as recommended by the International Centre for Asset Recovery. For example, one recommendation is to improve the transnational collaboration of financial intelligence units and prosecutorial authorities between onshore and offshore jurisdictions and tax havens.⁸⁶

Create obligatory measures: There is no substitute for obligatory corporate accountability measures that compel businesses to adhere to the law. The best example is the U.N. Binding Treaty on Business and Human Rights. Rightsholders and CSOs have worked hard to generate State support for and mitigate corporate resistance to the Binding Treaty, and it continues to be an opportunity to regulate in international human rights law the activities of transnational corporations and other business enterprises. Similarly, other treaty mechanisms, such as the now defunct International Commission against Impunity in Guatemala (CICIG), allow for States with compromised or weak rule of law to investigate and prosecute capture activities. Additional obligatory measures include supply chain due diligence, forced labor, anti-deforestation, and public procurement laws. The adaptation and scalability potential of these measures is literally global.

Business and human rights (BHR) framework: Albeit voluntary, the BHR framework established by the U.N. Guiding Principles on Business and Human Rights (UNGPs) has seen more robust implementation of late, namely of Pillars 2 and 3. The corporate responsibility to respect has been codified in five Western European nations' due diligence laws, ensuring that companies are held responsible for what happens in their supply chains at home and abroad. A dozen or so other countries have passed or are

⁸⁶ "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." See: 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-gedragwetenschappen/news/2023/03/how-financial-intelligence-units-collaborate-globally.html?cb.

debating parallel laws on similar issues, including the European Union.⁸⁷ The opportunities in this space are varied. On one hand, bringing cases to test the jurisdiction of these laws in Europe is crucial. On the other hand, Global South States might consider mirror legislation to homogenize civil and criminal claims standards, in addition to regulate South-South supply chains which are largely unaddressed. Access to remedy (Pillar 3)⁸⁸ remains the least advanced portion of the BHR framework; however, cross-company grievance mechanisms are being piloted and labor organizations are using worker-driven social responsibility to monitor and enforce their own working conditions.

Strengthen anti-corruption measures through law and policy: Traditionally, State capture is considered tantamount to grand corruption and most scholarly and policy innovations to address it have focused on the demand, receiving, or institutional end of capture. Only recently and still marginally has the anti-corruption field considered the supply of capture by private interests such as corporations. Nevertheless, this field offers numerous opportunities to address corporate capture, both of private corporations and State-owned enterprises.

- **Improve regulation, close loopholes:** Corporate capture or even State capture are rarely codified into law; rather, bribery, illicit transactions, influence peddling, nepotism, and the like — the mechanisms of capture — are the crimes punishable by law. However, the proposed Stop Corporate Capture Act (2021) in the U.S., which has little chance of becoming law, is a possible template for how States can tackle capture head-on.⁸⁹ A host of other regulations and loopholes to be addressed include: reform lobbying and regulate forms of influence, limit corporate political engagement, shut the revolving door, tackle tax havens, promote competition law and anti-monopoly reform (see the strategies and innovations section of this chapter), and strengthen anti-bribery laws to include extraterritoriality.
- **Anti-State capture regulator:** The Zondo Commission in South Africa proposed a “permanent commission to investigate, publicly expose acts of state capture and corruption in the way that this Commission did [...] and] make findings and recommendations to the President,” as well as a parliamentary “oversight committee on the

⁸⁷ The Corporate Sustainability Due Diligence Directive (CSDDD) was initially proposed by the European Commission in 2022. However, as of February 2024, its approval had been stalled by European authorities, particularly the German Government, which openly lobbied against it. The Directive would require approval by a coalition of governments representing at least 65% of the European Union population. Furthermore, it would require endorsement from the European Parliament and subsequent incorporation into national legislation by member states. See: Simon Mundy, “Landmark EU legislation hangs in the balance,” *Financial Times*, 14 February 2024, www.ft.com/content/05bf9f3d-90db-4aed-b925-b8664529cda5.

⁸⁸ “Pillar 3: Access To Remedy,” Shift, n.d., <https://shiftproject.org/resources/ungps101/pillar-3-of-ungp-remedy>.

⁸⁹ 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.

Presidency” — in effect proposing an anti-State capture regulator. While this proposal has not been addressed, it is a template for possible adaptation elsewhere.⁹⁰

- **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 — the Zondo Commission — is a clear model for how countries can investigate allegations of capture while allowing for civic engagement and public testimony.
- **Increase judicial mandates, pursue criminal prosecutions:** Several factors contribute to whether the judicial system can pursue capture more effectively. If capture is codified, or if judiciaries are empowered to prosecute capture as an amalgam of interrelated laws addressing supply and demand, then prosecutors and judges would have more tools at their disposal. Similarly, the misuse of power by a public official could be elevated from an administrative to a criminal offense in countries where this applies. Moreover, multi-jurisdictional investigations and prosecutions, including tracing illicit financial flows with the help of financial intelligence units in onshore and offshore jurisdictions as mentioned, would increase our chances of stopping capture.⁹¹
- **Conditionalities via progressive industrial policy:** One of the most intriguing avenues for change is offered by progressive industrial policy.⁹² Scholars such as Dani Rodrik and Mariana Mazzucato state: “Conditionalities that grant equitable access and sharing rewards are a central component of shaping the economy for the common good.” That is, in exchange for corporations receiving subsidies, public contracts, loans, intellectual property rights, and the like from the State without maximizing corresponding benefits for the public, we are missing an opportunity to “to catalyze investment, innovation and growth that is aligned with the goal of shaping more sustainable, inclusive, and resilient economies.” In other words, “con-

⁹⁰ 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>.

⁹¹ 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.

⁹² “Industrial policy is generally 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.” 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.

ditionalities are important to the design of industrial policies and (...) their absence could hamper success or lead to parasitic relationships, or capture, whereby businesses simply get handouts and subsidies from lobbying.”⁹³

- **Public procurement reform:** The corporate capture of the State in order to obtain public contracts is a prime object of grand corruption. At the heart of the Gupta-Zuma scandal in South Africa, for example, were bribes, influence peddling, and political appointments that allowed the Guptas to gain enormous influence and wealth vis-a-vis SOEs. Though the Zondo Commission’s recommendations fell short, South Africa did make sweeping procurement reform, which, if an independent regulator or anti-corruption office were to accompany the new chief procurement officer, could be a model for other nations.⁹⁴
- **Address capture of multilateral institutions, while strengthening their anti-capture functions:** CSOs have been consistently critical of the corporate capture of international and multilateral institutions, from the OECD to the U.N. If and once this capture is addressed, then these institutions could play an important role globally to address and stop capture. For example, the World Bank has consistently been a key source of public policy work. Also, the U.N. Conference on Trade and Development (UNCTAD) and the U.N. Convention against Corruption (UNCAC) have been flagged as less captured models where civil society can engage in policy-making.⁹⁵
- **Improve whistleblowing mechanisms, support leaking platforms:** The black box problem is that we lack data, transactional evidence, and methodologies to identify, track, and measure capture. To date, all major investigations and prosecutions of capture have relied on whistleblowers, whether corporate or government insiders or third parties such as journalists and non-governmental organizations (NGOs). However, the majority of countries do not protect whistleblowers against reprisals, offer remuneration, or incentives for their participation.⁹⁶ The Treasury Laws Amendment (Enhancing Whistleblower Protections) Act of 2019 in Australia largely fixed this and serves as a model for other countries.⁹⁷ In the void of whistleblower protections, leaking platforms such as those created by PODER and other media and CSOs throughout Latin America are another model for how to solve the black box problem.

⁹³ 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.

⁹⁴ Devi Pillay, Researcher, PARI, Interview on 4 September 2023.

⁹⁵ "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>.

⁹⁶ 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.

⁹⁷ 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>.

Close tax loopholes, support the *Nuevo Pacto Fiscal*: Universally, tax policy has been yet another preferred target of corporate capture. As a result, fiscal policy is porous at best, leading to tax avoidance and evasion at home and the growth of tax havens in offshore fiscal paradises abroad. The list of tax loopholes is long, but the proposals that rose to the top of this horizon scan include: windfall taxes, addressing externalities through taxation, eliminating the carried interest loophole and similar strategies by private capital, closing tax-free provisions on REITs, and addressing transfer pricing. Beyond individual measures, a promising strategy with global potential is the *Nuevo Pacto Fiscal* (New Fiscal Agreement), proposed by the Global Initiative for Economic, Social and Cultural Rights and other CSOs. It consists of: cooperating to adopt constitutional and institutional frameworks on fiscal matters centered on fulfilling human rights; taxation of wealth; exploring alternative tax policy options that benefit (Latin America) more, such as an effectively coordinated minimum tax rates and a unified framework for digital services taxes; addressing financial secrecy; regional asset registry; and implementing fiscal policies related to extractive industries that aim to mitigate climate change, reduce inequalities, and promote social and economic justice.⁹⁸

4.2.2 Energy transition opportunities

Address corporate capture in emerging legislation and regulation: Recent and proposed legislation to regulate the energy transition, such as the EU Critical Raw Materials Act, EU Deforestation-Free Regulation, U.S. Inflation Reduction Act, and laws and policies in Brazil to roll back deforestation and promote climate finance, offers opportunities for advocates and lawmakers to not only push for a just transition but also to advocate against capture. As written, these laws portend a transfer of benefits and wealth from the State to corporations, whether directly or indirectly. But they are just the tip of the iceberg of dozens of proposed climate regulations worldwide. Corporate accountability advocates have an opportunity to shape future legislation by insisting on anti-capture provisions.

Climate litigation and funding: Globally, rightsholders, their legal representatives, and CSOs are making creative use of climate litigation to push for human rights and environmental protections vis-a-vis corporate duties to respect and remedy violations. Cases in Brazil, Portugal, and Germany (on behalf of a Peruvian farmer) are just a few examples. In addition to opportunities to change precedent and repair harm, another opportunity has emerged: litigation funding, which is when a third party, such as a hedge fund, invests in a lawsuit in return for a percentage of the proceeds if a case is successful. If climate suits are to be replicated or taken to scale, advocates may consider this or other alternatives to fund them.⁹⁹

⁹⁸ "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>.

⁹⁹ 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.

Include conditionality in JETPs and climate finance mechanisms: Rodrik and Maz-zucato’s conditionality could also be applied to climate finance. For example, the EU Just Energy Transition Partnerships, which channel money from wealthier to poorer countries in order to wean them from fossil fuels, could contain anti-capture and other anti-corruption conditions as well as ones protecting human rights.¹⁰⁰ The JETPs come on the heels of older strategic resource partnerships, which Germany and South Africa, for example, have maintained for decades. Both are opportunities for improved conditionality and strengthening civic collaboration in an oversight role.

Investor-focused strategies, including ringfencing and divestment: In 2020, climate campaigners made previously unimaginable gains by convincing central banks, asset managers, insurance companies, and other institutional investors to ringfence and even divest from fossil fuels and related infrastructure. While promising, there were unintended consequences: private equity funds that invest in distressed assets scooped up these investments. Unfortunately, very few of these firms are exposed to public equity markets and therefore are not vulnerable to reputational risk, leaving campaigners at a dead end.¹⁰¹ Going forward, strategic engagement between advocates and investors to ringfence or phase out fossil fuel assets in favor of renewables poses an opportunity to accelerate the energy transition while ensuring justice.

Civic engagement in oversight: As the climate crisis unfolds, a component of the just transition has been to organize and advocate for civic engagement mechanisms whereby affected communities, workers, CSOs, and other stakeholders can participate in the decision-making and governance of this global transformation. Community-based natural resource management, multi-stakeholder initiatives such as EITI, and participatory budgeting and planning processes are just a few examples of grassroots participation. While most of these efforts are voluntary, they are opportunities to insert anti-capture advocacy and oversight into key components of the energy transition.

4.3 Strategies and Innovations

For this section of our horizon scan, we identified the innovations and strategies for concrete interventions that are already in play — mostly by CSOs but also some regulators — to tackle corporate capture. Many of these interventions hold potential for adaptability and scalability in other sectors and geographies across the world.

4.3.1 Main strategies and innovations

Decentralize funding, build a movement: A notable observation was the paucity of organizations in the Global South with explicit anti-corporate capture programming or

¹⁰⁰ 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.

¹⁰¹ *Runaway Train: The Perilous and Pernicious Path of Private Capital Worldwide*, Empower, 2021. <https://empowerllc.net/en/issues/private-capital>.

even mentions of capture in their work, as well as the siloed nature of extant interventions, most of which are not articulated across borders or sectors as part of a larger anti-capture movement. A similar scan of philanthropic organizations, prepared by the Trust Accountability & Inclusion Collaborative (TAI), found that corporate capture is not a commonly used lens by most philanthropies, governments, and multilateral institutions, particularly when describing grantees' projects. Of the minuscule amount currently dedicated to anti-corporate capture work, the vast majority goes to Global North organizations. Additionally, donors funding business-related initiatives tend to hold positions either opposed to or neutral with regards to the anti-corporate capture viewpoint; instead, they support facilitating private sector development, such as promoting competition and investment.¹⁰²

If, as a corporate accountability movement, we are to stop the corporate capture of the State, we must build up and out to incorporate the range of opportunities, strategies, and innovations identified for this report as well as new voices. This includes linking research, litigation, and advocacy strategies via improved South-South and South-North transnational collaboration. Groups such as ESCR-Net, PODER, ITJ, Conectas, Center for Legal and Social Studies (CELS), Centre for Applied Legal Studies (CALs), and the Civil Society Working Group on State Capture in South Africa (CSWG) are movement-building examples in the Global South. Empower recommends dedicating significantly more support 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 variety of organizations and regions.¹⁰³

Integral data-research-communication-organizing-advocacy model: Globally, six CSOs in the Global North and South have developed integral strategies to address corporate capture: PODER and ITJ in Mexico, CSWG in South Africa, ESCR-Net's Corporate Accountability Working Group (CAWG) (U.S., global), Oxfam International (UK, global), and Transparency International (Germany, global). For purposes of this report, Empower considers these as anchor organizations that dedicate a large portion of their programming to tackle capture head-on. With some variation, all of these organizations collect and use data, produce research, publicly disseminate their findings, accompany or support the collective organizing of rightsholders affected by corporate practices, and engage with the State and companies via advocacy and/or multi-stakeholder partnerships to address corporate capture. Some conduct public campaigning and communication, others focus on strategic litigation, and yet others promote policy-making. These innovative models could be adapted, replicated, and scaled elsewhere. There are numerous others worldwide whose work also addresses, challenges, or responds to corporate capture dynamics; however, this is not the predominant part of their ethos or programming.

¹⁰² "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.

¹⁰³ For more information on these and other organizations, please refer to the companion reference document accompanying this report.

Explain corporate capture, make it visible: The beneficiaries of corporate capture generally enjoy anonymity and fly under the radar. One of the reasons is that society as a whole knows next to nothing about the phenomenon. How can we bring capture into the light and make it visible? How can we solve the black box problem of how corporations unduly influence the State if we lack proof of capture? A prerequisite for any attempt to answer these questions is data about who captures who or what, and how. Some scholars, CSOs, journalists, and watchdog organizations, as well as scattered policy think tanks, forward-thinking regulators, and social enterprises, are already on the case, employing a mix of data-driven approaches, case studies, and strategic corporate research. Investigative journalism deserves particular mention, having brought us leaks and stories such as the Panama Papers and Pandora Papers, as it plays a transversal role throughout the different strategies and innovations listed below.

- **Track and measure the demand side of State capture:** Currently, tracking corporate capture is an anecdotal, episodic exercise, most often for the purposes of campaigning on a specific issue or supporting an accountability case or legal investigation. The reason is, though we are close, we still lack data and technology to measure capture in real time. However, isolated developments offer promise, especially on the demand side.¹⁰⁴ One of these is the State Capture Estimation and Monitoring of Anticorruption Policies at the Sectoral Level (SceMaps), a European academic-civil society partnership, which is developing an integrated risk assessment tool for estimating State capture and monitoring anti-corruption policies.¹⁰⁵ SceMaps uses the State Capture Assessment Diagnostics (SCAD), which in turn measures the process and results of State capture, including the business-State relationship. Both innovations are attempts to partially solve the black box problem and build a warning system of red-flags that would alert when capture occurs.¹⁰⁶

¹⁰⁴ Daniel Kaufmann is currently developing a Global Composite Index of State Capture, which draws on well-established data sources, including Varieties of Democracy (V-Dem), the Worldwide Governance Indicators, and the World Inequality Dataset. See: Elizabeth David-Barrett, Daniel Kaufmann, and Juan Camilo Ceballos, "Measuring State Capture," Global Programme on Measuring Corruption, October 2023, www.iaca.int/measuring-corruption/wp-content/uploads/2023/10/GPMC_Measuring_state_capture_19102023_online.pdf.

¹⁰⁵ "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: "Objectives," SceMaps, n.d., <https://scemaps.eu/objectives>.

¹⁰⁶ "State Capture Assessment Diagnostics," Center for the Study of Democracy, 26 June 2019, <https://csd.bg/publications/publication/state-capture-assessment-diagnostics/>.

- **Data analysis and visualization:** Situated between the supply and demand sides of State capture are database, analysis, and visualization tools that employ technology to map economic and political elites and expose capture. A leading example, founded by PODER, is QuiénEsQuién.Wiki, the largest open data source on businesspeople (including beneficial ownership), companies, and procurement data in Latin America.¹⁰⁷ Its software can identify the links between beneficial owners, companies, and over 6.6 million public contracts in the region. This type of data and technology, if paired with the Global Composite Index or SceMaps, could expand our ability to track and measure State capture back to its source: corporations. Also in this category is InfluenceMap, a think tank providing data and analysis about the impact of business and finance on climate change and running a trusted platform that analyzes corporate climate policy lobbying, which is used by socially-responsible investors.¹⁰⁸
- **Strategic corporate research on the supply side:** The other half of the black box — private and vested interests, including individuals, corporations, and illicit interests — is the supply side of corporate capture. A handful of organizations worldwide, including Empower, PODER, The Sentry, Center for Research on Multinational Corporations (SOMO), and Global Witness, conduct strategic corporate research — often on a case-by-case basis, within a certain economic sector, or geography — to follow the money and uncover who benefits and how from corporate capture and corporate-sponsored human rights and environmental violations.

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. The objective is to convert research into actionable intelligence for rightsholders and other stakeholders who can use it to hold businesses and governments accountable, whether through advocacy and engagement with investors and regulators, strategic litigation, or public communication and journalism to expose wrongdoing.

- **Investigative journalism:** As emphasized by interviewees on multiple occasions, investigative journalism serves as a crucial tool for exposing the corporate capture of the State and disseminating this information both strategically and widely. Networks of transnational investigative journalism, such as the Organized Crime and Corruption Reporting Project (OCCRP) and the International Consortium of Investigative Journalists (ICIJ), play a significant role in enhancing cooperation, mitigating the risks associated with challenging the powerful and well-connected, contributing to the professional development of journalists (by providing new tools and training),

¹⁰⁷ "Historia," QuiénEsQuién.Wiki, n.d., www.quienesquien.wiki/es/inicio.

¹⁰⁸ "About", InfluenceMap, n.d., <https://influencemap.org/index.html>.

collating data from various sources to facilitate access and triangulate evidence, and fostering mutual trust among journalists. Furthermore, these networks play a pivotal role in addressing corporate capture by spotlighting significant cases of corruption and exerting pressure on public officials to initiate prosecutions and sustain legal processes.¹⁰⁹

- Conflict zones and illicit interests:** Conflicts offer the perfect cocktail for corporations to capture the State and make a buck before anyone is the wiser. Recent examples include Azerbaijan’s ethnic cleansing of Armenians in the Nagorno-Karabakh region, the Israeli invasion of the Gaza Strip, and forced displacement and disappearances surrounding energy developments in Colombia and Mexico. Business and human rights issues in these areas are grave and urgent; however, oftentimes global mechanisms, policymaking, and civil society strategies cannot keep up. That said, two organizations — The Sentry and Heartland Initiative — are making visible the corporate capture and corporate-sponsored violations in conflict-affected and high-risk areas (CAHRA): The Sentry exposes how actors benefit financially from armed conflict and atrocities, while the Heartland Initiative works with investors to identify the severity of their investees’ risks in CAHRAs and support investor-led engagement that prioritizes civil society participation and human rights.¹¹⁰ Similarly, Empower, the Colectivo de Abogados José Alvear Restrepo (Cajar), Fundación Heinrich Böll, Global Witness, and others produce research and journalism and conduct litigation and advocacy to expose illicit actors and financial flows in State capture, including the role of armed actors and public security.
- Political education:** Capacity building and political education with rightsholders, CSOs, and other stakeholders, such as consumers, students, workers, and social movements, are key strategies for making corporate capture visible to a wider audience. Using the aforementioned data, research, and analysis, organizations such as ESCR-Net’s CAWG adapt and translate this information into tools for understanding and stopping capture. 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. For example, CAWG has produced an innovative online comic books series called “The Power of the 99% to Stop

¹⁰⁹ 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/63e4aef3ae07ad445eed-03b5/t/6481bc4abdc18e26af648b08/1686223969960/news-never-sleeps-bn14.pdf>. Pgs. 2-6.

¹¹⁰ The Sentry produces reports based on interviews with individuals directly involved in cases, documentary analysis (including direct requests for information from financial entities involved), and “forensic financial analysis” (including financial flow analysis). An example of one of its most significant investigations involves scrutinizing the corruption scheme of Democratic Republic of Congo’s President Joseph Kabila around a development project sponsored by China in exchange for mineral resources. Thanks to a leak of banking records, evidence was revealed regarding two major players in China’s industrial sector gaining access to vast mineral deposits in the Congo. The leak exposes opaque arrangements surrounding a long-term project that concealed both illegal and immoral practices. See: “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>.

Corporate Capture.”¹¹¹ In South Africa, the CSWG organized civic engagement opportunities to complement the Zondo Commission and ensure that testimonies of affected people and civil participation were included.¹¹²

Independent oversight of reform and regulation: Previously, we highlighted mostly top-down opportunities to strengthen anti-corruption measures through law and policy. However, bottom-up oversight strategies to reform laws and regulate aspects of corporate capture have shown promise, such as the innovative example of the CSWG in South Africa. It formed a public-facing group of 23 CSOs, coordinated by Open Secrets, to collaborate with the Zondo Commission and hold it accountable, which included the academic, research, and litigation expertise of its organizational members. The result was a unique innovation for how non-State actors can expose and stop State capture, as well as introduce corporate capture into the public lexicon. 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.¹¹³ Similarly, in “An Agenda for Action: A Joint Submission by the Civil Society Working Group on State Capture,” 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 limiting the use of “emergency conditions” to initiate procurement deals.¹¹⁴

Other examples of bottom-up oversight include codetermination (German practice of labor participation in corporate governance as opportunity for firm- or sectoral-level oversight of corporate capture) and shared equity (affected communities as shareholders with voting rights and participation in corporate governance).

4.3.2 Energy transition strategies and innovations

A peoples’ energy transition: Faced with the “corporate energy transition”, there is the possibility of building a “peoples’ energy transition” based on the respect for social rights and socio-environmental justice. This perspective aims to modify the current

¹¹¹ “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.

¹¹² 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.

¹¹³ “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.

¹¹⁴ “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.

patterns of energy consumption as well as the existing power relations within neoliberal capitalism. It acknowledges the material limits of the planet that make unlimited growth and capital accumulation impossible. This perspective requires the democratic participation of workers, social movement and civil society organizations, as well as the recognition of women as political subjects with a gender perspective.¹¹⁵

Grassroots organizing first, and grasstops advocacy, engagement, and litigation second: Collective action must be the first step in any civil society involvement in the energy transition. Full stop. If we are to achieve transformational change for our planet and human rights outcomes for our people — versus episodic, transactional change —, we must create permanent, grassroots-led, people-driven horizontal accountability mechanisms that hold powerful actors accountable to their commitments. Whether agrarian, community, labor, student, or social movement organizing, none of our other strategies will work unless backed up by collective organizing at the grassroots level.

The Global South is rife with good examples. Indigenous communities and *ejidos* organizing in Oaxaca and Yucatán, Mexico. The Marikana trade union and workers in South Africa, and the Marikana Solidarity Campaign that accompanies them. The Movement of those Affected by Dams in Brazil. The Río Sonora Watershed Committees in Mexico. The Worker-driven Social Responsibility Movement (WSR) in the United States, including the Coalition of Immokalee Workers. Garment and industrial worker organizing in Bangladesh. The Posco Pratirodh Sangram Samiti movement in India. The International Indigenous Peoples Movement for Self Determination and Liberation in the Philippines.

The importance of these organizations cannot be overstated. Through collective organizing they participate in civic engagement, direct action, implement community- and worker-led remedy mechanisms, act as watchdogs to prevent encroachment or regression by States and corporations, conduct public campaigning and communication, and participate in strategic litigation.

Between the grassroots and grasstops is a middle layer of CSOs that facilitate ground-truthing — the act of people directly affected by climate change and the energy transition speaking truth to power. These CSOs accompany the organizing efforts of grassroots organizations in the Global South, open gates for them — without acting as gatekeepers — with decision-makers in the Global North and South, and conduct advocacy, engagement, and litigation. Their work aims to establish genuine transnational collaborations between the grassroots and the grasstops. Examples include the ITJ, PODER, Cajar, Socio-Economic Rights Institute of South Africa (SERI), the Business & Human Rights Resource Centre, ESCR-Net, and Friends of the Earth, to name just a few.

¹¹⁵ “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.

At the grasstops level we find larger CSOs occasionally based in capital cities in the Global South but most often located in the Global North. These are human rights organizations, environmental groups, anti-corruption watchdogs, and similar groups, often with offices, staff, or programming throughout the world. They 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. These actors can play an important role in ground-truthing, lifting-up voices from the Global South, strategic litigation, or creating visibility for cases before strategic and wider audiences through public campaigning and communication.

In the aggregate, these groups — from communities, workers, grassroots organizations, and social movements engaged in collective organizing in the Global South; to the middle layer facilitating genuine transnational collaborations in the Global North and South; to grasstops organizations in the Global North — are the ecosystem upon which a truly sustainable and transformational just transition depends.

Strategic litigation leading to paradigmatic shifts: Organizations within this ecosystem — a sort of horizontal accountability transmission belt spanning the Global South and Global North — are also innovating in the realm of strategic litigation. For example, in addition to the aforementioned climate litigation and funding opportunities, the free, prior, and informed consent (FPIC) rights of agrarian, indigenous, and communal landholders in particular, but also of any person affected by an extractive or infrastructure project, must be protected during the energy transition, particularly their land, territorial, and natural resources rights. Organizations such as ITJ, ProDESC, PODER, Conectas, Cajar, CELS, SERI, and the European Center for Constitutional and Human Rights (ECCHR) are employing agrarian, civil, and criminal litigation at the domestic level in the Global South, European due diligence laws, North-South and South-South extraterritorial claims, and other creative uses of the law in home and host jurisdictions to create new precedents, case law, and norms for how multinational corporations and States should implement the energy transition globally.

Climate data supply chain bonanza: Previously, we mentioned concerns about emerging climate and energy legislation facilitating wealth transfers from States to corporations in the haste to fight climate change. Be that as it may, an important opportunity arising from new regulation is the mountain of new climate and supply chain data that will come online shortly. For example, the EU Critical Raw Materials Act includes critical raw material supply chain monitoring; the EU Deforestation-Free Regulation requires importers and exporters to ensure that products are not sourced from deforested or damaged land and the U.S. Inflation Reduction Act tracks all subsidies and tax incentives flowing to corporations. In terms of corporate and supply chain transparency, the scale of this data bonanza will feed new strategies for accountability, including about the supply and demand sides of corporate capture.

Call out hypocrisy in MSIs and partnerships, while using them to boost transparency: Multi-stakeholder groups, global partnerships, and voluntary cooperation mechanisms are rife with greenwashing, false solutions, and other effects of corporate capture. CSOs and other stakeholders have caught on and increasingly call out half-measures and similar hypocrisy. As a result, the legitimacy of EITI, U.N. COP meetings, the G20, and similar spaces has come into doubt. To address this, one strategy holds particular promise. In the World Health Organization Framework Convention on Tobacco Control adopted in 2003, CSOs wisely included Article 5.3, which states “Parties shall act to protect [Global Tobacco Treaty] policies from commercial and other vested interests of the tobacco industry.” These words effectively prevent Big Tobacco (“vested interests”) from capturing global anti-tobacco policy-making. In the Binding Treaty negotiations, CSOs have proposed including similar language. Now, in spaces addressing the climate crisis and energy transition, the Kick Big Polluters Out campaign is similarly trying to exclude fossil fuel companies from international climate agreements.¹¹⁶

In this chapter, we discussed the key findings from our horizon scan, focusing on the myriad challenges and gaps associated with the corporate capture of the State. Simultaneously, we explored significant opportunities, strategies, and innovations capable of effecting meaningful changes, including given current power dynamics, particularly in the Global South. Numerous organizations and tools are already working to make a difference and deserve to receive adequate support and promotion in the struggle against corporate capture.

As mentioned, readers can consult the companion reference document where the key findings outlined in this chapter are expounded upon in much greater detail. That document provides in-depth details about the topics, organizations, and legal frameworks discussed in the present report. Additionally, in the companion document, readers will find cases and examples that supplement the topics synthesized in this chapter.

¹¹⁶ “Nuestras Demandas,” Kick Big Polluters Out, n.d., <https://kickbigpollutersout.org/demands>.



5.

CONCLUSIONS



5.

CONCLUSIONS

To say that the fight against corporate capture in the Global South is at a critical juncture would be an understatement. The beneficial owners, intellectual authors, and architects of capture processes use corrupting tools that leverage their influence over the State for private benefit. Often it is termed grand corruption. Other times “institutional corruption.” Either way, it is corruption that ultimately contributes to the consolidation of corporate power.

As detailed throughout this report, the corrupting effects of this phenomenon have a more profound effect in the Global South than in the North, given the power asymmetry between big businesses and the wealthy elite versus that of regulators and civil society who seek to reduce corporate power. Thus, the capture by multinational corporations of the development trajectories of underdeveloped countries, for example, tends to perpetuate and reproduce inequalities between rich and poor countries. Moreover, the climate crisis and energy transition have exacerbated manifestations of corporate capture and economic concentration, albeit exposing vulnerabilities that, as a corporate accountability movement, we can exploit to ensure a just transition.

Civil society has a huge role to play in ending corporate capture, as collectively we are the ultimate horizontal accountability mechanism, uncaptured and unencumbered by corporate power. Our opportunities, strategies, and innovations for concrete change lie along a transmission belt of sorts, between rightsholders, grassroots organizations, and social movements affected by corporate power and the energy transition, most egregiously in the Global South, to grassroots organizations in the Global North, whose proximity to power endows them with significant privileges and responsibilities. Along the way, strategies based in a genuine transnational collaboration, starting with data, research, and journalism, passing through collective organizing and domestic and host State civic engagement and litigation, through global advocacy and litigation in home States, offer the most promise.

We have other reasons to be hopeful. We can expand accountability mechanisms, close loopholes and strengthen anti-corruption measures, push for innovations in regulation and policy, cooperate more effectively across jurisdictions, and create and strengthen social enterprises. Most importantly, we must reclaim the narrative away from corporations, expose capture and monopolies, lift up and center the experiences and voices of those most affected by corporate power and the energy transition, and take leadership

from grassroots organizations and social movements in the Global South about how to achieve a just transition.

The world is rapidly changing. Beyond specific interventions to address corporate capture, access to technologies and the information revolution have empowered young people, indigenous peoples, workers, and voters to question corporate power and challenge advanced capitalism and neoliberalism, both locally and globally. Never before have we witnessed an entire generation committed to people and planet. As they begin to occupy decision-making spaces, law, policy, and remedy mechanisms will improve, and the paradigm will shift.

The contours of how we can stop corporate capture and transform our economic paradigm are an inclusive, green, progressive industrial policy; competitive, innovative, and fair markets, including meaningful corporate transparency and accountability; a just energy transition; and human rights obligations for State and companies, including access to effective remedy in the case of violations.

At the outset of this report, we described the corporate accountability movement as straddling an abyss. Behind us are advanced capitalism and the neoliberal order. Ahead of us is a future yet unwritten, but one we are endeavoring to transform into a new economic paradigm, a true stakeholder economy for the common good.

Below us, however, are the underpinnings of corporate power — corporate capture and monopoly power — and the effects and externalities they have wrought upon our economic, political, and social systems. This horizon scan has made it abundantly clear that, if we do nothing, we will simply fall into the abyss, wholly succumbing to seemingly boundless corporate power.

But, if we realize the opportunities around us, strategize, innovate, and take concrete steps forward, we can still change the path ahead. We must act!

"It always seems impossible until it's done."

- Nelson Mandela



6.

INTERVIEWS



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



7.

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