Short WORKSHOP REPORT FORM

Number and title of workshop: WS 1.1 How to Tackle the Different Faces of State Capture

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Panellists:

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- Kevin Evans, Tiri – Indonesia
- Akere Muna, Vice Chairman, Transparency International
- Luis Jorge Garay, International Expert

Main Issues Covered

1. State capture (StC) is understood as the phenomenon by which vested interests influence and manipulate the policy making process to its advantage. The concept serves to describe different situations of cooptation depending on a wide range of factors: strength/weakness of each State; cross-national, national or local levels; means of co-opting States; actors involved in the StC (legal/illegal); etc.

Recent analyses involve in a higher degree the role of organized crime, the use of violence and the creation of parallel structures, mostly in the case of weak states. However, issues such as revolving doors and state private sector capture still need to be considered when analyzing StC in stronger States. Efforts to tackle StC should take into account the consequences of ongoing public policy such as prohibition.

2. The case of **Montenegro** and the different phases of StC in this country: first, the creation of criminal networks supported by the State and linked to Italian mafias; second, a stage of transition to "legal corruption" mostly as a consequence of privatizations; and, third, extension of StC's effect in Montenegro to neighboring countries through illicit drug smuggling.

The relation between Foreign Direct Investment and financial crisis mitigation with StC: poor control on political influence of foreign capital; use of off-shore companies; privileges to particular private banks.

StC has increased risks to freedom of speech.

3. The case of **Indonesia** after the 1997-8 Asian Financial Crisis: the interests of the ruling elite out of synch with wider interests. Costs for general public that ended up paying for private foreign debt risk. Problem exacerbated as no genuine political competition existed.

The need to recognize the specific existence of political society and the risk of being captured

to establish a political monopoly. StC could come from various sectors: from within the State (bureaucratic or military dominance) private, civil society (religious or other sectarian dominance) or political society takeover (squeezing out the other players to establish a political monopoly).

Role of money in politics (campaign financing, vote buying, public contracting as a reward to political investment) and the contrary effects of law enforcement approaches such as setting legal compliance levels so high that everyone fails, and thus nobody get punished, or make punishment more severe.

4. The different stages of StC in **Africa**: first, colonialism (capture of the whole country to the advantage of other people); second, StC by one-party systems; and third, privatizations. Power moves from one group to the other and the most affected are those in need of basic services. Under StC situations in Africa the Judiciary is also unable to react as it is co-opted by the Executive power.

To address StC it is fundamental to change the system, e.g. through holistic approaches such as the National Integrity System promoted by Transparency International. There is no way to stop StC without looking at the system.

5. The introduction of the concept of **illegal networks** as a key element to analyse corruption and organized crime StC. StC has different stages, the worst being the **Co-opted State Reconfiguration** (CStR).

StC and CStR imply that organized crime is not always confronted by the State and sometimes there are cooperative relations between actors inside and outside the State. Also, there is a need to introduce new elements to the analysis such as the role of lawful, unlawful and undefined actors within an illegal network; the use of violence in addition to traditional bribery and corruption; and the goal of achieving penal benefits (impunity) further than economic rewards.

The use of illicit network analysis in **Guatemala, Colombia and Mexico** show that there are many types of relations between actors, and the importance of identifying the most connected agents within the network as well as those with the largest amount of information.

To tackle StC and CStR there is not a single approach, there is a need to design institutional and holistic approaches, strengthen the State and the rule of law, reorganize in the first place the judiciary and the police, create a civil culture against organize crime, work at the same time in many institutions. Tackling StC and CStR is a long term task.

6. The example of **Peru** shows the relevance of using the concept of illegal network as there was no public space that was not under control of the criminal organizations. Dismantling this situation was possible because the state collapsed. However, the state does not always collapse, or this process could take too long, so there is need to generate a culture of legality and law enforcement, plus empowering institutions.

7. Q&As: need to address political legitimacy of captures institutions (elections under the risk of fraud and laws under the risk of benefiting powerful groups only); collapse of states as a final situation in which StC can be tackled; legalization/regulation of current illicit drugs to reduce opportunities for StC and the power of current drug cartels; the role of donors for tackling StC or making it worse by affecting the rules of the game; efforts to measure the different stages, types or levels of StC show that there is no country free of the risk of StC.

8. Conclusions: StC is a complex phenomenon, it could imply the existence of parallel state structures, and the means for capturing the state could go from lobby to violence. Breaking down StC always generates crisis. The relations among actors involved in illicit networks are

very complex. The role for civil society has to do with understanding the problem, generating information, calling attention to this problem. It is required to prevent by increasing institutional cultural legality. However, there is always a risk of tackling StC as it is in hands of those that use violent means.

Main Outcomes/Outputs

1. Identification of the many faces that StC can take in different regions around the world and of key elements for analysis of StC under different institutional conditions. Efforts to measure the different stages, types or levels of StC show that there is no country free of the risk of StC.

2. The use of the "illicit network" concept to have a deeper understanding of StC dynamics, actors involves and goal.

3. About strategies to tackle StC:
*   A common element is the need to use institutional and holistic approaches that take into account the judiciary but also a larger culture of rule of law and a long term vision.
*   Tackling StC requires a crisis and in some cases the collapse of a State. However, the state does not always collapse, or this process could take too long, so there is need to generate a culture of legality and law enforcement, plus empowering institutions.
*   The need to address public policies' implications and recognize that political society is by its very nature more fraught with integrity threats than other areas.
*   There is a need to make the rules of the game clear and achievable, with accountable discretion –and to not get lost seeking perfection.
*   Successful experiences against StC include progresses in the judicial system in Colombia (new legislation to penalize congressmen participating in illicit networks) and the dismantling of illicit networks in Peru.

4. The role for civil society:
*   Bring greater visibility to state cooptation/capture; get to know illicit networks, know how they operate, who are the actors involved, which are the linkages between lawful, unlawful and undefined actors. There is a need to expose them so people understand what the networks are doing.
*   Map illicit networks.
*   Social surveillance and intelligence networks, new technologies.
*   Think outside the box.

Recommendations, Follow-up Actions

1. For civil society: increase the understanding of illicit networks (actors, means and goals), their particularities in different regions and the common elements required to address them.
2. For state reformers: take into account policy implications and the risks of StC disguised as foreign investment; recognize the risk of particular interest co-opted institutions being legitimized through political processes.
3. Multi-sector efforts: promote a long term vision and strategies against StC; seek holistic approaches; increase understanding of which institutions are being co-opted and at what level within countries.

Workshop Highlights (including interesting quotes)

Co-opted State Reconfiguration could be defined as "the action of lawful and unlawful organizations, which through unlawful practices seek to systematically modify from inside the political regime and to influence the drafting, modification, interpretation, and application of the rules of the game and public policies. [These practices are undertaken] with the purpose of obtaining sustained benefits and ensuring that their interests are validated politically and legally, as well as gaining social legitimacy in the long run, although these interests do not follow the founding principle of social welfare". **Garay** et al. (2009). Illicit Networks Reconfiguring States.

StC is a complex phenomenon, it could imply the existence of parallel state structures, and the means for capturing the State could go from lobby to violence. Breaking down StC always generates crisis. **José Ugaz**, moderator.