

CONCEPTUALIZING STATE CAPTURE IN LATIN AMERICA AND ASSESSING ITS IMPACTS ON THE EXTRACTIVE SECTOR

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LIST OF ABBREVIATIONS

ANP	National Petroleum Agency
BCC	Business Coordinating Council
CEO	Chief Executive Officer
CC	Corporate Capture
CMN	Consejo Mexicano de Negocios
CONFIEP	Confederación Nacional de Instituciones Empresariales de Perú
CSO	Civil Society Organization
EITI	Extractive Industries Transparency Initiative
FDI	Foreign Direct Investment
FF	Ford Foundation
GDP	Gross Domestic Product
LAC	Latin America and the Caribbean
MBC	Mexican Business Council
MME	Ministry of Mines and Energy
MNE	Multi-national Enterprise
NGO	Non-governmental Organization
NRCC	Natural Resources and Climate Change
OECD	Organization for Economic Cooperation and Development
OGP	Open Government Partnership
OPM	Oxford Policy Management
PEMEX	Petróleos Mexicanos
PODER	Project on Organizing, Development, Education and Research
PPA	Public-Private Associations
RO	Regulatory Organisms
SC	State Capture
SM	Service Mark
SNMPE	Sociedad Nacional de Minería, Petróleo y Energía
SOE	State Owned Enterprise
USMCA	United States-Mexico-Canada Agreement
WB	World Bank

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EXECUTIVE SUMMARY

This report is the result of an effort to approach and deepen our understanding the issue of State Capture (SC) as a global phenomenon that affects the performance of civil society in the pursuit of justice, equality and respect for human rights. Following up on research conducted by Oxford Policy Management (OPM) in Africa and Asia (2020), this paper seeks to understand the scope and impacts of the phenomenon of state capture on the work of Latin American civil society organizations (CSOs) involved in the governance of natural resources.

An operative definition of State Capture should be: “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.”

In 58 interviews conducted with members of 7 sectors and across 9 countries, we identified actors, trends, challenges and impacts of the state capture phenomenon. The main findings of this research are:

- The concept of state capture is not widely used in LAC countries. Its usage continues to be concentrated in the academic spheres, specialized media and in civil society organizations working on the subject.
- There is a shared opinion that state capture has been propelled by the neoliberal policies implemented in most of the countries in Latin America and which were aimed at opening up the economies to foreign and native capital.
- Agents who capture the state sometimes also aim to generate narratives that seek to suppress the effects of this capture from the media and public agendas. That is done by co-opting media and placing topics that allow them to divert attention. Most of the interviewees mentioned media narrative-building as a mechanism of the state capture.
- From the perspective of the business and public sectors, it seems that the concept is unknown or that they openly disagree with it, referring more frequently to corruption.

The impacts generated by the capture of the state on the environment and natural resources are serious, since the elites have the possibility of generating laws that compromise the protection of the environment and natural assets.

DIFFERENTIATED IMPACTS OF SC:

For **civil society** members, there were 16 items were identified, among which the shrinking of civic space was the most common. This item was associated with threats to activists, defamation campaigns, legal prosecution against activists and other forms of intimidation. Ad-hoc regulatory frameworks, environmental damage and human rights violations were also a common perception of other impacts of CS and the inequality relations between economic elites and CSO's.

From the perspective of the **private sector**, there were no risks associated to SC as defined on this paper. There is a common ground on fighting corruption and weak legal frameworks. There is also an issue of gender imbalances around decision-making and wages. There was also a shared idea about how women perform in business as care-takers of risk, environmental laws and social consensus.

From the **public sector** point of view, the SC impacts focus on legal framework strengthening and fighting corruption. There was a consensus on how lobbying and revolving door practices are a good opportunity to improve decision-making for public servants.

Selected conclusions

- Neoliberal reforms enabled elites' power to grow and establish itself within political institutions and social spheres.
- SC is a regular practice not only in extractive sectors. There are formal, informal and illegal mechanisms that are part of SC phenomena.
- SC is a complex phenomenon with multilayered factors which needs a holistic approach to understand it. Therefore there is not a consensus about its definition or relevance within natural resource governance actors.
- We can see SC mechanisms throughout the 3 power structures (executive, legislative and judicial). Moreover, we can see that the weaker sub-national structural power is, the more vulnerable it is for SC.
- SC phenomena highlight the inequality of conditions for the democratic use of natural resources.
- Depending on the context and historical composition of elites, these captors can be national or multinational corporations. At sub-national level there are also organized crime forces capturing local authorities.
- There has been a growing tendency to criminalize human rights and environmental defenders' work. Criminalization is a concern shared by a large number of our interviewees from civil society and academia. In the interviews, largely economic and political elites resort to coercive legal and illegal methods to protect their interests.

With a view to strengthening CSO's participation in natural resource governance, we put forward 4 main **recommendations** as a result of our interviewees responses:

1. Make State Capture visible.

- **Further research instruments and analytical tools may help** to face the negative impacts of SC.
- More analysis on **gender** differentiated impacts are needed.
- There is an unexplored opportunity to use **big data tools and new technologies developments** to help on studying and communicating the phenomenon widely.
- **Effective national and international campaigning and workshops** (webinars) may help to set a common understanding of “do’s and don’t” about SC and its negative impacts on natural resource governance.

2. Monitor and red-flag private-public sectors through the following:

- Create communication **channels of information about extractive sector obligations** in terms of projects, taxes, licenses, financing, environmental impacts, etc.
- **Build proposals for identifying public sector structural weaknesses** which are usually framed as corruption. This should include legal framework, administrative guidelines, due diligence policies, etc.
- **Expose all government instances “targeted” by state captors.**
- Create a **public registry of political consultants and think tanks** conducting lobbying practices.
- **Construct and disseminate media narratives about the inconvenience of informal links within elites members and public servants.**

3. Change the norm.

- **Promote laws that regulate** and make lobbying transparent.
- **Promote laws to observe and regulate “revolving door”** practices.
- **Promote “cooling off”** periods before and after occupying any public or private position.
- **To regulate the elite’s control and ownership of the media.**
- Guarantee **universal access to information** about high-impact extractive industry projects.
- Implement effective **mechanisms to make extractive projects accountable.**

- Guarantee **environmental and human rights protection clauses** within all the extractive sector obligations in terms of licenses, taxes, consultations, impact assessments, etc.
- Promote and to guarantee **free access to multi-stakeholder** natural resource governance initiatives.
- Guarantee **universal access to justice** through **due diligence mechanisms**.

4. Build a global movement.

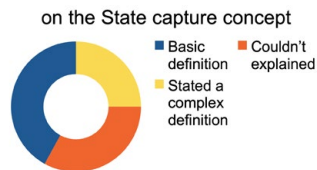
- Full and **public commitment from different stakeholders to guarantee civic space conditions**.
- **Strengthen communities' and CSOs' capacities** to have free, well-informed participation in public debate and agenda to improve natural resource governance.
- **Promote more watchdog initiatives** to observe tax payments, environmental and social impacts, business accountability, contract transparency, beneficial ownership registers, money laundering fighting, etc.
- **Implement safe community informative meetings** and documents around human rights issues and extractive industries impacts on the territories.
- **Harmonize global agendas** on the Escazú Agreement, the UN Binding Treatment on Business and Human Rights, EITI, ILO, and Climate Change agendas aimed at strengthening civic space.

State Capture

(a situation where powerful actors 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)

Very limited usage of the concept.

It is used mainly by academy, media and specialized CSO's.



Narrative-building by capturers

Narratives as mechanisms to legitimize SC.

Media Cooptation

Criminalization of Human Rights defenders

Propelled by neoliberal policies in Central and Latin America

Which were aimed at opening up the economies to foreign and native capital.

Privatization of state-owned companies
Deregulation and flexibilization.

Among public and business sectors it is referred to as corruption

They disagree with the concept of State Capture since it implies legal and illegal, formal and informal mechanisms.

Corruption focuses on certain malfunctions of a bureaucratic system.

Who capture Agents of capture

Corporations
Organized crime
Chambers of commerce
Political parties
Armed forces
Churches

Enhance business access

Recruitment into government

Institutionalized consultation

In the extractive sector

Regulation according to their own interests

Licences granting

Lack of enforcement and weak system of justice – Impunity

Tax exemption

How Mechanism of capture

Revolving door

Lobbying

Political campaigns financing

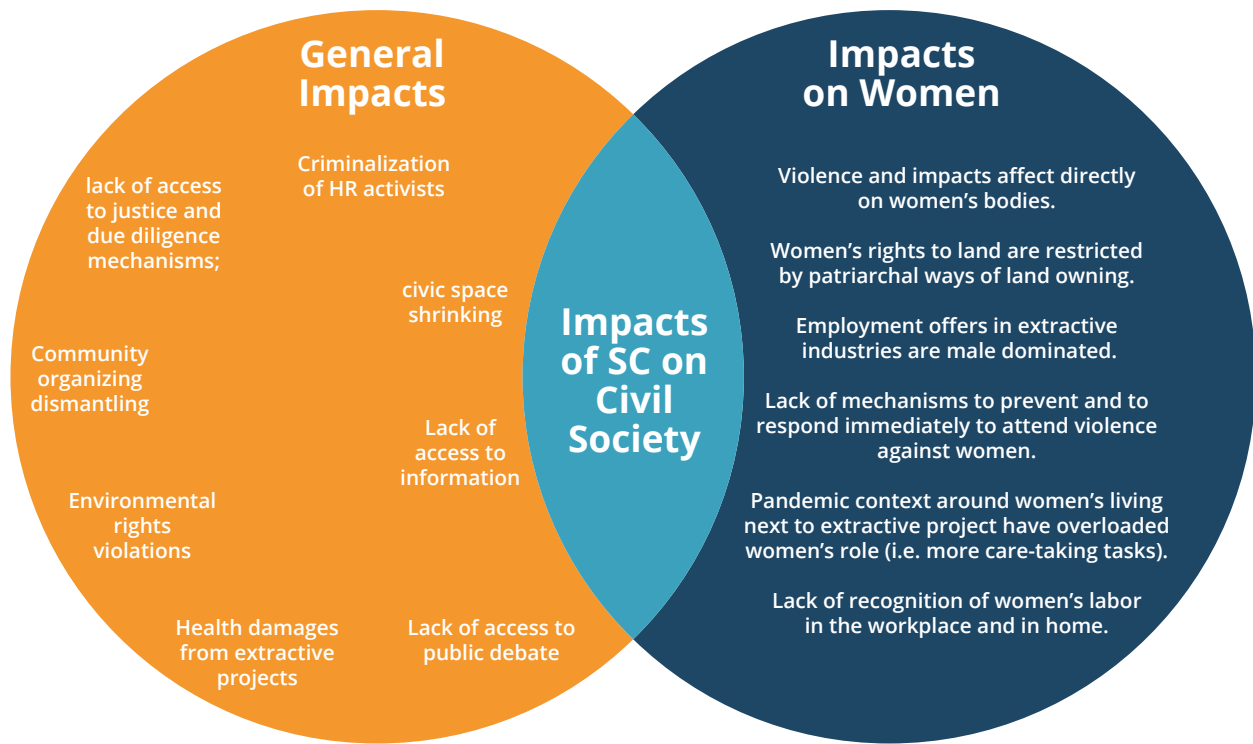
Public campaigns in mass media

System of Justice

Contract granting

International advocacy

Effects of SC



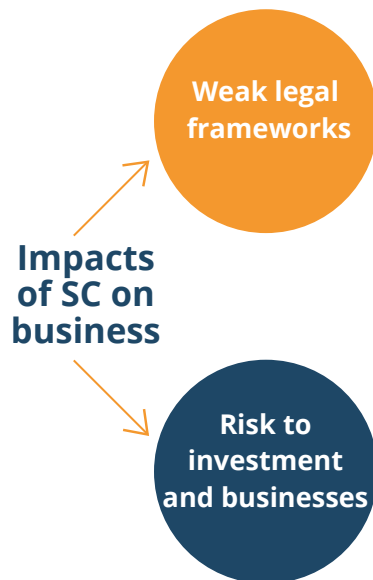
On Women

Lack of access to decision making positions dominated by men.

Lack of intern debate about gender issues and diverse approaches on business models based on gender.

More women struggling getting better positions in equal conditions of salaries with male partners.

Gender compromise between women to become a stronger voice inside the business model.



Public sector

Lack of resources in terms of human capital, building capacity and political pressure to observe legal frameworks.

Legal risks associated to corruption frameworks.

Administrative risks linked to decision making processes which puts pressure over low ranked authorities.

Capture of political parties affects how government applies laws and policies in the future.

Lack of balanced mechanisms to control and to monitor advocacy/SC activities from different actors.

Lack of public debate on natural resources governance in multi-stakeholder approaches.

I. INTRODUCTION

For over eight decades, the Ford Foundation (FF) has been fighting inequality. A very significant part of that work aims to dismantle the structures that produce exclusion and marginalization. Through its Natural Resources and Climate Change (NRCC) team, the FF has targeted its efforts to fight inequality in some Global South countries whose economies depend on natural resources. Therefore, the NRCC team has fostered agency among rural communities throughout Asia, Africa, and Latin America to face the consequences associated with the growth of natural resource extraction.

Extractive industries have impacted states, companies, and, of course, the communities that inhabit the territories where the extractive projects are located. There is a legitimate interest in participating in the policies design and implementation that govern the extractive industries sector. Ideally, the whole process of natural resource extraction -in this case minerals and fossil fuels- is meant to benefit society. A clear, transparent, and efficient policy on the extractive sectors is basic to assure good governance.

Nonetheless, sometimes those benefits are hardly perceived and what prevails are the profits a few powerful corporate groups make with high costs to the environment and local communities. Hence, investigations and studies have suggested that the influence exerted by powerful and influential actors on the different branches of government -mainly the legislative branch, but also on the executive and even the judiciary branch - as has been the case in many countries in Latin America, has enabled them to reap benefits for themselves at the expense of the public interest and resulting in weakening governance.

That influence of powerful private actors on government is known more broadly as state capture (SC). In this sense, this research considers state capture a relevant phenomenon in addressing the root causes of inequality. This research aims to gain an accurate understanding of the scope and impacts of the state capture phenomena in Latin America, particularly in the extractive sector, including minerals and fossil fuels. There is a need for a consistent understanding on how this phenomenon impacts natural resources governance and human rights and how this is relevant for civil society organizations (CSO) and their priority issues and goals. This research focuses on Mexico, Central America, Peru, Colombia and Brazil, and aims to provide an overview of SC that can shape a regional perspective on the subject.

In the first part of this report we explain the methodology used in this research. Then, we present the general findings of this research. We address some of the patterns that we found helpful in shaping a regional perspective on state capture in Latin America. Finally, we make a series of recommendations to our CSO colleagues based on the conclusions. In Annex A, we discuss the concept of state capture in Latin America, based on the specialized literature from the region. We have taken a previous research definition to frame this work. In Annex B we address our findings in each of the countries that were part of this study.

1. Methodology

This research is based on the methodology designed by OPM in its report on Asia and Africa, with some variations. It is a qualitative analysis that aims to incorporate academic and theoretical contributions on the state capture phenomena and practical perspectives from different actors working on the front lines. This research brings together the perspectives of academics, experts, journalists, former and current public officials, and the representatives of corporate clusters and consulting firms. The research team identified these key actors through a regional strategic-actors mapping exercise together with the Ford Foundation. It is based on documentary resources and interviews with key informants. Our document sources include academic research papers, official documents (governmental and corporate reports, press releases), and CSO reports.

In this research, we seek to explore how CSOs involved with natural resources governance are affected by state capture and their strategies to deal with it. Hence, many of the respondents in this research belong to CSOs and other Ford Foundation grantee partners in Brazil, Colombia, Peru, Mexico, and Central America. It is fair to say that it was clear CSOs, academics, and journalists were more keen to participate in this research as opposed to other actors such as companies, public officials, and consulting firms. In the case of Central America, we consider it is misrepresented in the total number of interviewees. However, we try to fill the gap with the literature and the available information. The sources and methods used to collect and analyze the information are briefly described in the section below.

a) Literature Review

As part of the initial review, the research team focused on public sources to contextualize state capture as a starting point. OPM's proposed definition was used to frame this research. After that, specific sources were included to investigate the state capture phenomenon's scope in the region and at the country level. CSO's reports and other documents from international agencies were used for this report.

The local literature review explored some specific cases that illustrate the SC phenomena in Latin America. This report tackles the Odebrecht and Lava Jato cases due to their relevance to the subject matter.¹ Also, an open-source platform, MediaCloud, was used as a media monitoring tool. It allowed the research team to gauge the level of impact state capture has on the local media of the countries under study. The Media analysis helps to understand whether the concept is known and useful in the public agenda. The MediaCloud platform fits better for the English version of the concept, but it helped us monitor the LAC media.

b) Data collection and data analysis

The research for this report is based on three specific data collection methods: Interviews, focus groups, and an online survey.

Individual interviews were designed as the primary data collection method, which allowed us to get information on state capture's conceptualization. The interviews were carried out with a representative from each of the sectors -private sector, public sector, civil society organizations, journalists, the academic community, independent experts – in order to understand their perspectives on the SC phenomenon and its impacts on the extracti-

¹ Both cases revealed a series of corruption, money laundering, and improper payment operations to benefit a group of companies to acquire various contracts, some for public works as in the Odebrecht case. These are paradigmatic cases that show the way the phenomenon of state capture operates.

ve sector. The questionnaire's design was based on categories derived from the theoretical content and the research's objectives. The interviews consist of a list of semi-structured questions divided into four main blocks. The first one explored elites/powerful groups' influence in the country and the concept of state capture; the second focused on the influence on extractive sectors; the third collected information on the impacts on CSOs, and the last one was oriented towards the future and strategies to dismantle state capture.

In the **Expert interviews**, the research team posed face-to-face semi-structured questions to key actors to explore state capture in-depth and its performances in the selected region countries. In these interviews, we followed the same structure, exploring state capture mechanisms more deeply.

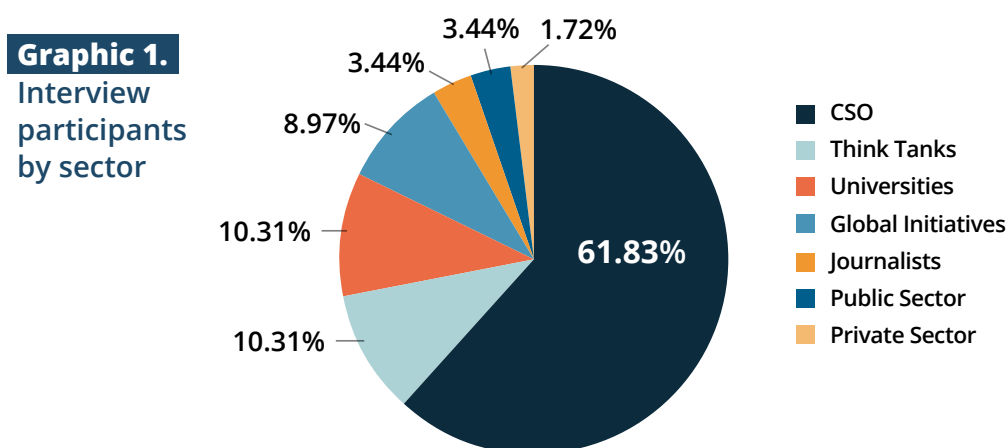
The **focus groups** brought together four or five persons-groups representing CSOs currently working on raising the perception of state capture in the region and the problems it generates. The focus groups also discussed the obstacles these groups face in their work, their activities and their objectives. This method allowed us to have a clearer idea of the differences and agreements in the topic and the categories addressed. All the collected information from interviews is classified into different categories and systematized in a database (see Annex A).

Owing to the public health restrictions imposed by the current Covid-19 pandemic, all the interviews and focus groups were conducted virtually through video-conference platforms; Zoom and Jitsi. According to the PODER's ethical code that promotes open code software, other commercial platforms were excluded on security grounds.

Finally, we make a special effort to incorporate a gender perspective in this research. First of all, the research team included an equal number of men and women. Furthermore, it included equal representation of women in the interviews and focal-groups. The focus groups were always balanced. One of them was represented by women from different countries and mainly oriented at digging into the roots of the impacts of state capture on women.

c) Interviews data

The interviews were carried out between January and February 2021. In total, around **127 invitations** were sent by email to prospective participants in the interview process. The research team received a positive response from **58 people** representing some sectors, such as CSOs, think tanks, universities, global initiatives, journalists, public sector (public officials), and private sector (chambers, companies, and associations).



We must note that this research had feedback from the CSOs working on issues related to natural resources, transparency, accountability, and human rights defense. Of the total number of interviewees, **CSOs represent 62%**, while **universities and think tanks** together represent **20%**; **10%** correspond to **public officials**, **3%** refer to **global initiatives**, and **3% to the private sector**, as can be seen in the above graphic. We had **28 women** and **30 men** in our interviews (48.2% and 51.8%, respectively).

Although the representation of CSOs is greater than the public and private sector, this is so because this research aims to gain knowledge of the extent of SC's impacts on their work. However, this representation is not deliberate; as mentioned above, **127 people** from different sectors were invited to participate. At least 27 persons from the private sector, including extractive companies, were invited, which means **27%** of all the sent invitations. However, out of 100% of persons invited from the public sector, only **7%** accepted the invitation, while civil society reached **63%** of persons who agreed to the interview, as we can see in the chart.

Graphic 2. Level of acceptance

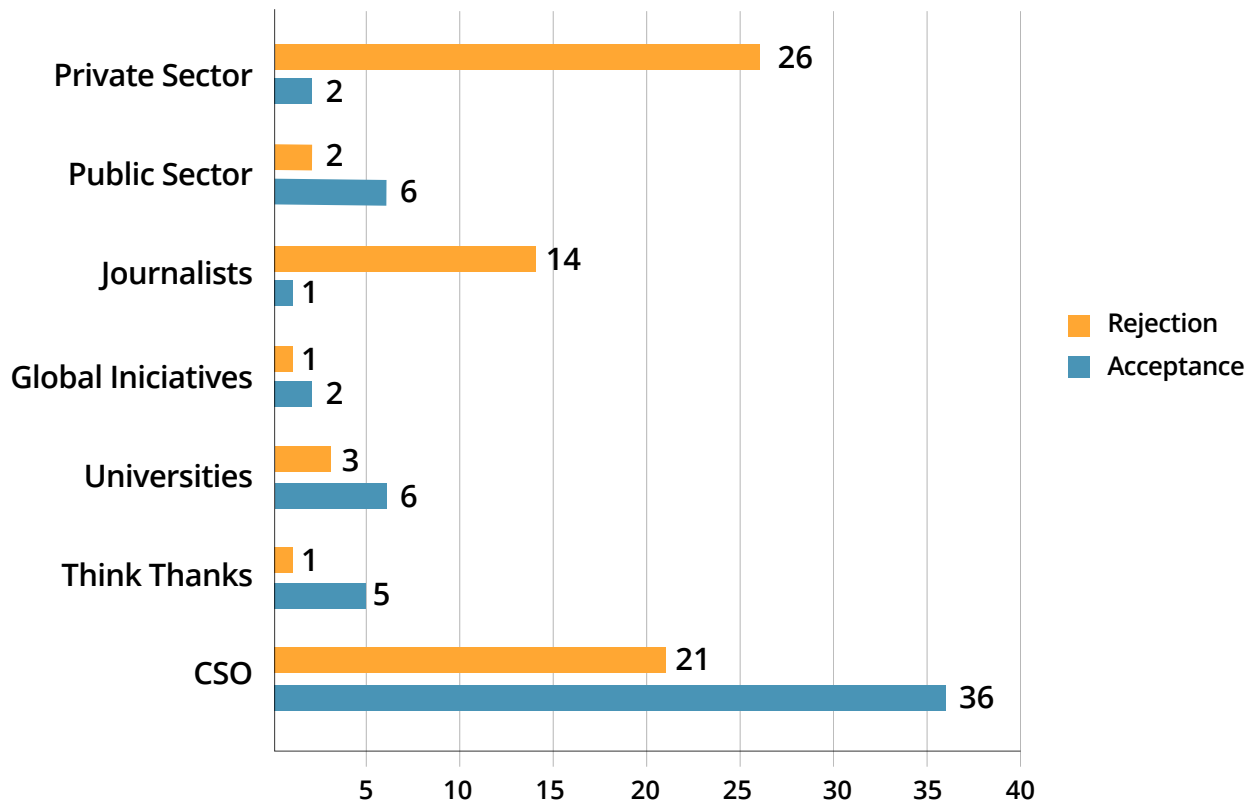


Chart 1. Main concepts associated with SC

KEY CONCEPTS / KEY PRACTICES	STATE CAPTURE	CORPORATE CAPTURE OF STATE	CORRUPTION	MACRO CRIMINALITY
Systematic response	■	■		■
Mid-long term changes	■	■		
Legal framework modification/misuse	■	■	■	
Judicial interference	■	■	■	
Tax collecting preferences	■	■	■	
Media access/shaping narratives	■	■		
Technical expertise	■	■		
Informal ties (social networking) with high influence on structural power	■	■		■
High level positions	■	■	■	■
Political campaigns financing	■	■	■	■
Access to economic resources	■	■	■	■
Economic Diplomacy		■		
Community manipulation		■		■
Public Services Privatization	■	■		
Revolving door	■	■		
Academic institutions capture		■		
Violence/threatens				■
Bribery			■	

Source: PODER

II. FINDINGS

- According to the interviewees, the concept of state capture is not widely used in their countries. Its usage continues to be concentrated in the academic spheres, specialized media and in civil society organizations working on the subject.
- Derived from the interviews, there is a shared opinion that state capture has been propelled by the neoliberal policies implemented in most of the countries in Latin America and which were aimed at opening up the economies to foreign and native capital.
- Agents who capture the state sometimes also aim to generate narratives that seek to suppress the effects of this capture from the media and public agendas. That is done by co-opting media and placing topics that allow them to divert attention. Most of the interviewees mentioned narrative-building as a mechanism of the state capture.
- From the perspective of the business and public sectors, it seems that the concept is unknown or that they openly disagree with it, referring more frequently to corruption.

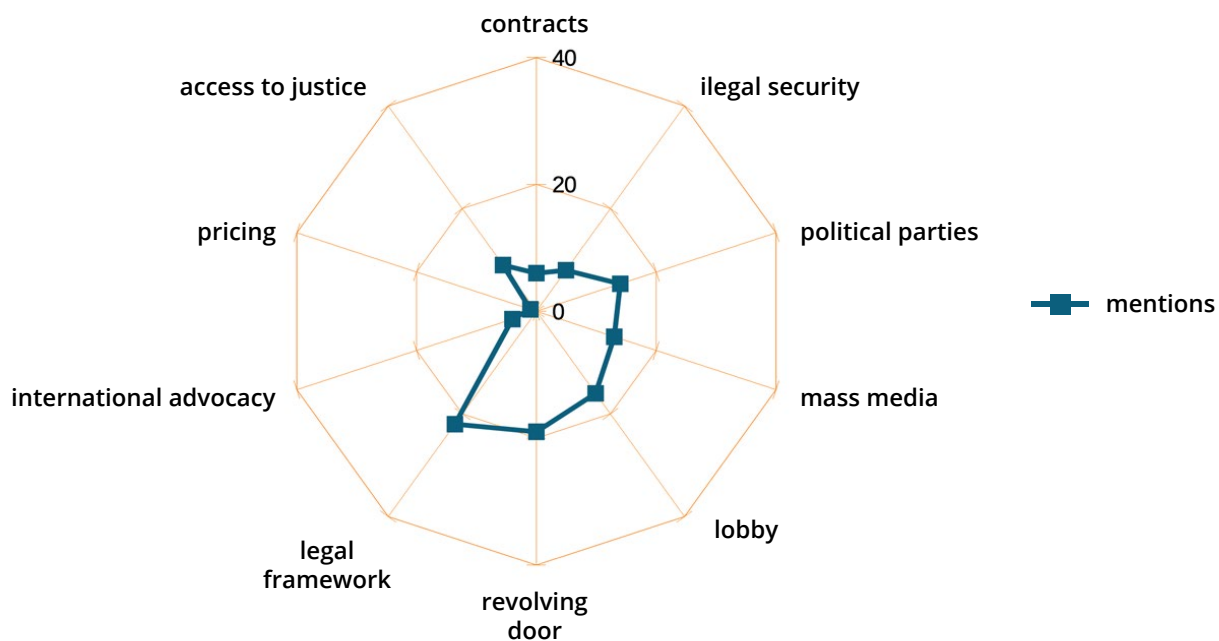
1. About the concept of State Capture

Most of our interviewees know or have heard about the SC concept before. More than 80% said yes and the rest commented they only know a little bit about it. In the case of our interviewees from Guatemala and Colombia, they mentioned “Cooptation of the State” and “Parallel State” as operative synonyms. 42% of interviewees mentioned a basic definition of SC; while 25% built a complex definition and the remaining 33% couldn’t explain a particular idea of it. Surrounding these definitions, we found that the SC concept was linked to companies 18 times, followed by corruption (8 times), organized crime (6 times), corporate capture and human rights 5 times in relation to each word. (see graphic below).

Regarding the scope of SC practices, there is a general understanding on the thinking in specific spaces inside the structures of power. The strategic offices for extractive sectors are related to: tax regulation, labor policies, environmental regulation, and to issues related to social conflicts including indigenous people’s consultation processes. This is a significant item because extractive industries are linked to land property, that is, not only a matter of rights but an environmental, cultural and historical issue in LAC region. Mining corporations are more identified with SC than oil companies.

The ways this capture occurs has a variety of forms which can be complementary in several cases. As shown in the graphic below (Graphic 7), our interviewees identified the legal framework and regulation as the most frequent cases of SC, with 22 hits. This is followed by the revolving door practices (19) and lobbying channels at all levels of government structures (16). In the middle of the range, we observe political campaigns financing (14) and public campaigns in mass media (13); followed by access to justice mechanisms (9), and illegal security entities (8) as other ways to gain structural power. Contract granting (6), international advocacy (4) and pricing deregulating are the less common practices identified in this exercise.

Graphic 3. SC most common mechanisms

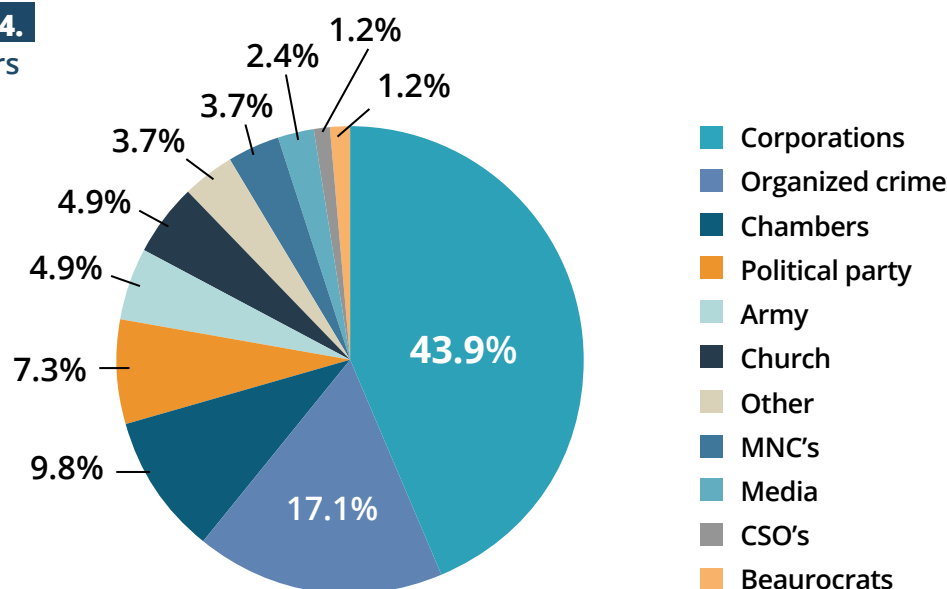


In the case of the concept in extractive industries, there is a wider interpretation of the sector going beyond oil, gas and mining projects. Interviewees mentioned agriculture and livestock activities as crucial for SC in Brazil, Colombia and Guatemala. Renewable resource energy projects were pointed out as key factors of SC as examples of natural resources governance.

2. About the elites

Regarding interviewees' analysis of the elites, we found a special focus on corporations as principal actors capturing the state, with almost 44% of mentions. They pointed out a variety of actors involved with particular interests on SC practices, such as organized crime (narco and paramilitary bodies) with 17%; chambers of commerce (10%); political parties through election campaigns (7%); armed forces and churches with almost 5% of hits. The lowest part of the list is occupied by multinational corporations identified as foreign investment, mass media and civil society organizations aiming to advocate for or against extractive projects. (see Graphic below).

Graphic 4.
Key actors



Further analysis should look to measure the interactions between these actors.

3. On the impacts (by sector)

After the interviewing process, some of the outcomes we observed around the SC phenomena are strongly linked to trust and equal access to due diligence regarding structural power. There is no doubt that economic, political, social and capacity building resources are not distributed equally within all constituencies and therefore, their capacities to demand and exercise influence on State institutions are not at the same level. Even the mechanisms to build and socialize their different narratives are unequal in range, scope and frequency.

The impacts generated by the capture of the state on the environment and natural resources are serious, since the elites have the possibility of generating laws that compromise the protection of the environment and natural assets.

In the following chart, we classify and analyze outcomes identified by different actors according to the interviews.

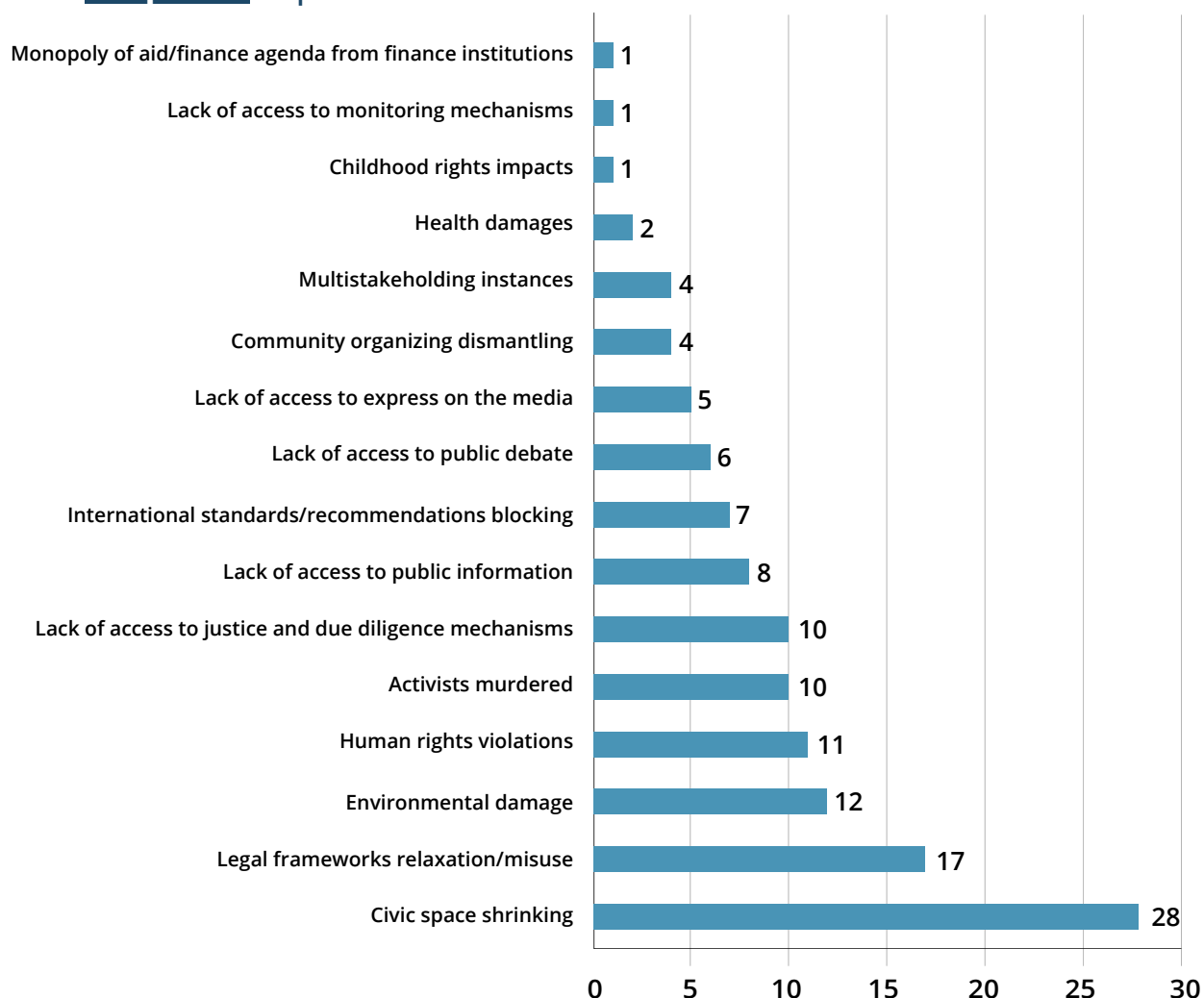
SECTOR	OUTCOMES ASSOCIATED TO SC	ON WOMEN
CIVIL SOCIETY	<ul style="list-style-type: none"> • Criminalization of HR activists/mass media attacks; CSO spying; • activists murdered; civic space shrinking; • lack of access to public debate on projects; • lack of mechanisms to monitor compromises from government and companies; • health damages from extractive projects; • community organizing dismantling; • lack of access to information; • barriers to international standards/organizations recommendations; • lack of access to mass media; • human rights impacts; • childhood rights impacts; • environmental rights; • lack of communication with democratic instances; • monopoly on “development/aid” agenda; • lack of access to extractive companies; • lack of access to justice and due diligence mechanisms; • relaxation of legal frameworks in labor rights and support of poor sectors to counter strike epidemic context. 	<ul style="list-style-type: none"> • Violence and impacts affect directly on women’s bodies. • Women’s rights to land are restricted by patriarchal ways of land owning. • Employment offers in extractive industries are male dominated. • Lack of mechanisms to prevent and to respond immediately to attend violence against women. • Pandemic context around women’s living next to extractive project have overloaded women’s role (i.e. more care taking tasks). • Lack of recognition of women’s labor in the workplace and in home.
CORPORATIONS	<ul style="list-style-type: none"> • Weak legal frameworks promote corruption risks to investments. 	<ul style="list-style-type: none"> • Lack of access to decision making positions dominated by men. • Lack of intern debate about gender issues and diverse approaches on business models based on gender. • More women struggling to have better positions in equal

		<p>conditions of salaries with male partners.</p> <ul style="list-style-type: none"> • Gender compromise between women to become a stronger voice inside the model business.
PUBLIC SECTOR	<ul style="list-style-type: none"> • Lack of resources in terms of human capital, capacity building and political pressure to observe legal frameworks. • Legal risks associated to corruption frameworks. • Administrative risks linked to decision making processes which puts pressure over low ranked authorities. • Capture of political parties affects how government applies laws and policies in the future. • Lack of balanced mechanisms to control and to monitor advocacy/SC activities from different actors. • Lack of public debate on natural resources governance in multi-stakeholder approaches. 	
FINANCE SECTOR	<ul style="list-style-type: none"> • Lack of legal regulation and monitoring of political campaigns financing. • Lack of international standards to measure human rights, environmental, social impacts of extractive industries. • Lack of consensus on international instruments to make agreements (i.e. climate change, Escazu) legal binding instruments. 	<ul style="list-style-type: none"> • Under-representation of women's perspectives in sector. • Women are more required to prove merits of their positions. • More trust among female partners to improve business modeling approaches "to make it right". • Women lie less than men in business making. • Women care more than men about other factors related to projects.

a) On civil society

In the case of impacts related to SC in extractive activities on communities and civil society organizations, 16 items were identified, among which the shrinking of civic space was the most common (28 mentions). This item was associated with threats to activists, defamation campaigns, legal prosecution against activists and other forms of intimidation. Activists murdered belong to this item but we wanted to identified it as a separate item (10 mentions).

Graphic 5. Impact



The next item was ad-hoc regulation and the misuse of legal administration in favor of business (17 hits). This was followed by environmental damage (12) and human rights violations (11). The lack of access to due diligence processes and justice administration had 10 mentions. The lack of access to public information about extractive industries was mentioned 8 times, followed by international advocacy blocking of international standards and agreements to protect human rights (7). The next item was lack of access to public debate instances to participate on extractive projects license granting (6). In the last positions, we found the traditional ways of community organization dismantling and the lack of communication channels with multi-stakeholders to express about projects with 4 mentions each.

There is a general perception by civil society organizations that there are high risks to the exercise of their work and defend human rights. It is so in part due to the inequality between powerful elites and CSO.

b) On the private sector

Regarding the impacts on extractive sector interests, the representatives of the private sector interviewed mentioned the weak legal framework as a source of uncertainty to private investments and business. Of course they identified this item as a legitimate tool to improve government performance and not a corruption issue. The interviewees belonging to this sector never identified risks or impacts directly associated to SC as defined on this paper.

What we found more interesting were the gender issues mentioned by our interviewees, who spoke about the gaps in salaries and decision-making positions. They also agreed on the need for operative conversations within the sector about the challenges of women and other ways of modeling business.

The finance sector identified the lack of consensus on international standards to protect human rights and due diligence on extractive projects as a risk for their performance. Like the corporate representatives, these interviewees shared their point of view on how women perform in financing and taking care of other risk factors like environmental laws and social consensus.

c) On the public sector

Regarding the public sector we found the same approach to the SC concept. This is more related to corruption issues which are challenging bureaucratic performances in all instances of structural power. All of our interviewees spoke about lobbying and revolving door practices as a good opportunity to improve decision-making for public servants. One of our sources said there was a lack of perspective about the political and legal pressure exercised over public servants. This was kind of a dark side of SC narrative which is, in fact, a negative concept on how instrumental powers work. One of the impacts associated with SC is political campaign financing which challenges the continuity and the implementation of laws and justice.

“In general, women lie less.”

Private Sector

III. CONCLUSIONS

- The prevailing definition of SC is: ***"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."***
It is helpful and outlines different spheres of instrumental power aiming to control structural power to increase private interests. It reflects the complexity, but we consider CCS helps to reach areas outside the national-governmental scope.
- The neoliberal reforms brought about a weakening in State structures in the 1980's and 1990's decades. These reforms enabled elites' power to grow and establish itself within political institutions and social spheres. All of our interviewees agreed on this complexity and on the historical roots of corruption within LAC cultures and contexts.
- The SC concept focuses on both captured instances of structural powers and the different instrumental powers aimed at capturing the state. This is important because the phenomenon has multilayered factors and needs a holistic approach to understand it.
- SC is a regular practice not only in extractive sectors. There are formal, informal, and illegal mechanisms that are part of the SC phenomena.
- Not all mechanisms of SC are illegal practices. Nevertheless, a vast amount of them is opaque on purpose, which is not helpful for democratic natural resource governance.
- There is no agreement about the usefulness or clarity about the concept of SC within constituencies. CSOs agree on its relevance and pertinence to show natural resource governance imbalances between actors where communities and CSOs usually have less capacity to respond in conflicts.
- Regarding the media, there is still a strong narrative about corruption to explain SC cases. SC's presence and framework are becoming more potent in the last five years because of the recent case of Odebrecht, which affected national politics in the region.
- There is strong evidence of SC mechanisms over the state's strategic instances in the three structural powers (executive, legislative, judicial). Moreover, we can see how the weaker sub-national structural power is, the more vulnerable it is for SC.
- General outcomes of the SC phenomena highlight the inequality of conditions for the democratic use of natural resources. Furthermore, this becomes evident in events that review the "sustainability," "development," "climate change" concepts in international agendas.
- Actors identified as state captors in the extractive sector are companies and forces of organized crime. Depending on the context and historical composition of elites, these captors can be national or multinational corporations. This is the case of elites in Central America, which were limited to develop oil and gas infrastructure and easily accepted multinational investments to join SC play.

- Elites in Latin America are old family-holdings with a large number of enterprises. This monopolization of industries is almost inherent to the structural powers and determines the participation of FDI in the extractive sector. We can see this in countries where mining is the base of the economy, and usually, the laws related to this activity are conservative or relaxed in terms of license granting, tax collection. In Mexico's case, the participation of FDI in the oil sector is under the control of SOE Pemex and national holdings.
- In recent years, there has been a growing tendency to criminalize human rights and environmental defenders' work. Criminalization is a concern shared by a large number of our interviewees from civil society and academia. In the interviews, largely economic and political elites resort to coercive legal and illegal methods to protect their interests.
- It is essential to point out the killing of activists and rights defenders within the territories where extractive industries operate.

IV. RECOMMENDATIONS

This section includes a series of recommendations drawn from the opinions expressed by our interviewees and PODER staff members involved in this research project. All recommendations are guided by the objectives of this process which is to help CSO's to have a better understanding of SC, its mechanisms and key actors in the LAC region. After a review of all the interviews, we identified some opportunities which would help our partners think through the strategies to combat inequalities and injustices generated by this phenomena.

The first part of this section is guided by global recommendations coming out of three questions posed to our interviewees: 1) How do you think we can strength the role of CSO's in the fight against SC?; 2) What should the role be for funding agencies in fighting SC?; and, 3) Which other actors should play a role in this fight against the SC phenomenon?

1. Make State Capture visible and adopt a contextual methodological model for research and study. Our interviewees agreed on the lack of tools to define and identify mechanisms, risk factors and assess its impacts. We think a wider and deeper knowledge of SC among different constituencies would help to raise the profile of the issue and enhance the understanding of the phenomena.

- **Further research instruments and analytical tools may help** actors to understand and work on effective proposals to face the negative impacts of SC.
- More analysis on **gender** differentiated impacts are needed to improve women's and LGBTTI community members to participate.
- There is an unexplored opportunity to use **big data tools and new technologies developments** to help on studying and communicating the phenomenon widely.
- **Effective national and international campaigning and workshops** (webinars) may help to set a common understanding of "do's and don't" about SC and its negative impacts on natural resource governance.

Civil Society Organization's role in this could be:

- To adopt a proactive leadership in establishing SC debates on the local, national and global agenda and to invite other constituencies (i.e. communities, academics, foundations, media, etc.) to participate in Forums and Conferences.
- To promote more studies and applied research projects within different sectors.
- To participate in multi-stakeholder Working Groups on the subject, to develop different approaches to tackle SC's negative effects on natural resource governance. We have seen broader opportunities for a good governance agenda within multi stakeholder groups. This could include EITI/OGP/NRGI programs.
- To share information and to promote this agenda at the international, national and local levels with an inclusive approach.

- To design and implement capacity-building programs to extend this issues to other constituencies. This would help key actors to understand the SC phenomena and to construct a useful framework to understand, for example, the imbalances of influence over government.
- To support initiatives created to use and communicate extractive industries data on behalf of human rights promotion.
- To lead a critical position and invite high level organisms on the role of aid/ finance/ cooperation programs on SC mechanisms in LAC region.

2. To design and implement tools to monitor and red-flag public sectors vulnerable to SC.

- It is fundamental to create communication **channels of information about extractive sector obligations** in terms of projects, taxes, licenses, financing, environmental impacts, etc.
- **To build proposals for identifying public sector structural weaknesses** which are usually framed as corruption. This should include legal framework, administrative guidelines, due diligence policies, etc.
- **To expose all government instances “targeted” by state captors.** All offices, meetings, law reforms, consultants, campaigners should be visible to the public. The US political party funding register is a good practice to share.^{145 146}
- A **public registry of political consultants and think tanks** conducting lobbying practices will be very helpful too.
- **To construct and disseminate media narratives about the inconvenience of informal links within elites members and public servants.** We are referring here to family relations and social club links where key decision-makers share time and conversations out of public eye. This is what Durand frames as “class connection”.

Civil Society Organization’s role in this could be:

- It is desirable to take a proactive role in the international initiatives agenda to strength the focus on the imbalances of power around SC.
- To monitor all sources of information (i.e. public databases and registries on Beneficial Ownership and Anti-corruption initiatives). A better understanding of extractive industries administrative procedures and supply chains would help to an informed debate to red-flag strategic points.
- To flag SC activities by alerting on media and safe leaking platforms. It is important to strength the quality of our narratives around the impacts of extractive industries and do it safely.

¹⁴⁵ OpenSecrets, «Donor Lookup», OpenSecrets, 2021, <https://www.opensecrets.org/donor-lookup>.

¹⁴⁶ OpenSecrets, «Political Action Committees (PACs)», OpenSecrets, 2021, <https://www.opensecrets.org/political-action-committees-pacs/2020>.

3. To change the norm. To address the complex landscape of state capture, most of our interviewees agreed that it is essential for governments to establish measures to counteract the influence of elites on public decisions and public debates at all levels. These efforts should be oriented to:

- **To promote laws that regulate** and make **lobbying** transparent.
- **To promote laws to observe and regulate “revolving door”** practices.
- **To promote “cooling off”** periods before and after occupying any public or private position.
- **To regulate the elite’s control and ownership of the media.** At the same time, government instances should guarantee communities and CSO’s equal access to media.
- To guarantee **universal access to information** about high-impact extractive industry projects.
- To implement effective **mechanisms to make extractive projects accountable** before, during and after the permits are granted.
- To guarantee **environmental and human rights protection clauses** within all the extractive sector obligations in terms of licenses, taxes, consultations, impact assessments, etc. This should be part of commitments to international standards and norms implementation.
- To promote and to guarantee **free access to multi-stakeholder** natural resource governance initiatives.
- To guarantee **universal access to justice** through **due diligence mechanisms** and commitments.

Civil Society Organization’s role in this could be:

- To promote capacity-building programs for mid-low range bureaucrats targeted by SC to prevent bad practices and help to implement a red-flag on SC risks.
- To support and attend forums and to publish materials to disseminate best practices on tackling SC impacts.

4. To build a global movement against SC. There is a key role for community-based organizations and CSOs to improve natural resource governance. International initiatives frame the quality of the participation of Civil Society members as Civic Space. On this matter, initiatives should observe:

- Full and **public commitment from different stakeholders to guarantee civic space conditions.** This include all Human Rights, specially freedom of expression, access to information, freedom of association and safe public demonstrations too.
- To **strengthen communities’ and CSOs’ capacities** to have free, well-informed participation in public debate and agenda to improve natural resource governance.
- **More Watchdog initiatives** to observe tax payments, environmental and social impacts, business accountability, contract transparency, beneficial ownership registers, money laundering fighting, etc.

- **To implement safe community informative meetings** and documents around human rights issues and extractive industries impacts on the territories.
- **To harmonize global agendas** on the Escazú Agreement, the UN Binding Treatment on Business and Human Rights, EITI, ILO, and Climate Change agendas aimed at strengthening civic space.

Civil Society Organization's role in this could be:

- To improve regional efforts to analyze and communicate negative effects of SC in their territories. More presence in the sub-national level is needed to attend local authorities' "targeting".
- To help communities and counterparts to escalate their narratives surrounding SC negative impacts.
- To support community-based initiatives to monitor and ask for the accountability of state captors (Watchdog projects).
- SC agenda should be complementary to other international initiatives on human rights, transparency and Civic Space issues.
- To improve networking skills and to design and implement best practices on fighting SC.

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VI. ANNEXES

Annex A. What is State Capture in Latin America?

1. Theoretical framework

The phenomena's main background in the LAC region is the period of the 1980's and 1990's decades characterized by neoliberal economic policies: "the overall result [of which] was an awkward mix of low growth and increasing income inequality ... within ... economic stagnation and political turmoil".² As Harvey well noted, this structural turn "depended upon the increasing power, autonomy, and cohesion of businesses and corporations and their capacity as a class to put pressure on state power... This capacity is most easily exercised directly via financial institutions, market behaviors, capital strikes, or capital flight, and indirectly through influencing elections, lobbying, bribery, and corruption or, even more subtly, through commanding the power of economic ideas."³ This turn, says Fairfield, moved Latin America away from a statist model characterized by heavy public ownership, government planning, and state intervention toward a neoliberal model that places the much greater agency in the hands of the private sector.⁴

In the early 2000's Hellman, Kaufmann and Jones noted that firms' **efforts to shape the very institutional environment** in which they operate was state capture.⁵ They also distinguished state capture (SC) from administrative harassment, consisting only of payments to bureaucrats to gain access to some services or concessions to operate. For them, state capture is defined as "the capacity **to influence the formation of the game's basic rules** (i.e. laws, rules, decrees and regulation) through private payments to public officials".⁶ State capture is the consequence of concentration of economic power and, for an extended period, only a selected group of firms could capture the State.⁷ This scenario where economic power, directly and indirectly, influences political powers to strengthen **economic elites** (legal and illegal) is related to state capture.⁸ In Latin America, Tasha Fairfield views the economic powers as a variety of capitalism dominated by large, diversified, family-owned domestic business groups.⁹

These economic "agents" who have the resources to implement several mechanisms to capture the structural power are called holdings, and they operate in blocks to **monopolize** and enhance the conditions to increase their profits. These networking processes create complex, dynamic, efficient links within elite members, guarantee confidentiality to private activities, legal, political, social, and economic agreements to give cohesion to those agents aiming to capture the State.¹⁰ According to Domhoff, this corporate power is exercised by economic, political, and discursive (mass media) mechanisms to control and influence government leaders' in different ways and levels.¹¹

² David Harvey, *A Brief History of Neoliberalism* (Oxford ; New York: Oxford University Press, 2005), 88.

³ David Harvey, *A Brief History of Neoliberalism* (Oxford ; New York: Oxford University Press, 2005), 116.

⁴ Tasha Fairfield, «Structural Power in Comparative Political Economy: Perspectives from Policy Formulation in Latin America», *Business and Politics* 17, n.o 3 (octubre de 2015): 412, <https://doi.org/10.1515/bap-2014-0047>.

⁵ Joel S Hellman, Geraint Jones, y Daniel Kaufmann, «An Empirical Analysis of State Capture and Corruption in Transition», 13 de abril de 2000, 1.

⁶ Hellman, Jones, y Kaufmann, 2.

⁷ Hellman, Jones, y Kaufmann, 6.

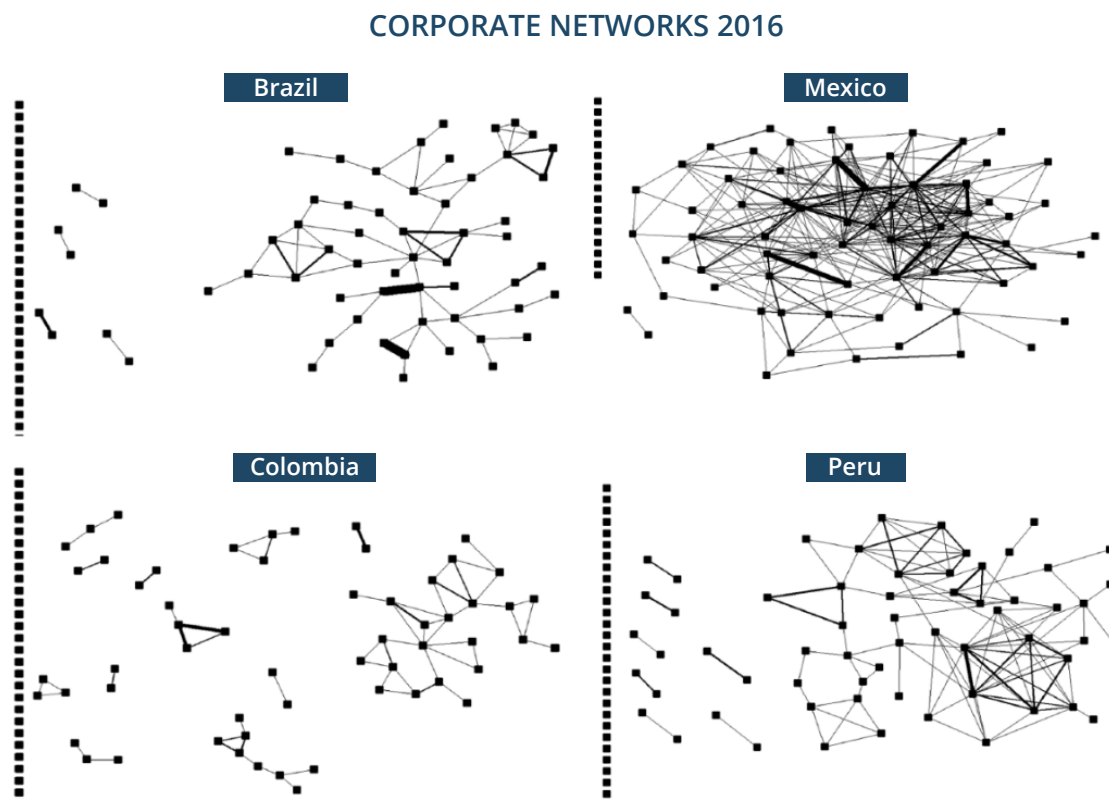
⁸ Daniel Vázquez, *Captura del Estado, macrocriminalidad, y derechos humanos*, Primera edición, Debate renovado (Ciudad de México: Facultad Latinoamericana de Ciencias Sociales, Sede México : Fundación Heinrich Böll e.v. : Universidad Nacional Autónoma de México, Instituto de Investigaciones Jurídicas, 2019), 70-71.

⁹ Fairfield, «Structural Power in Comparative Political Economy», octubre de 2015, 412.

¹⁰ Luis Jorge Garay Salamanca, ed., *La captura y reconfiguración cooptada del estado en Colombia*, 1. ed (Bogotá: Método : Avina : Corporación Transparencia por Colombia, 2008), 23.

¹¹ G. William Domhoff, *Who Rules America? Power and Politics, and Social Change*, 5th ed (Boston, Mass: McGraw-Hill, 2006), 47.

Figure 1. Corporate networking in Brazil, Peru, Colombia and Mexico



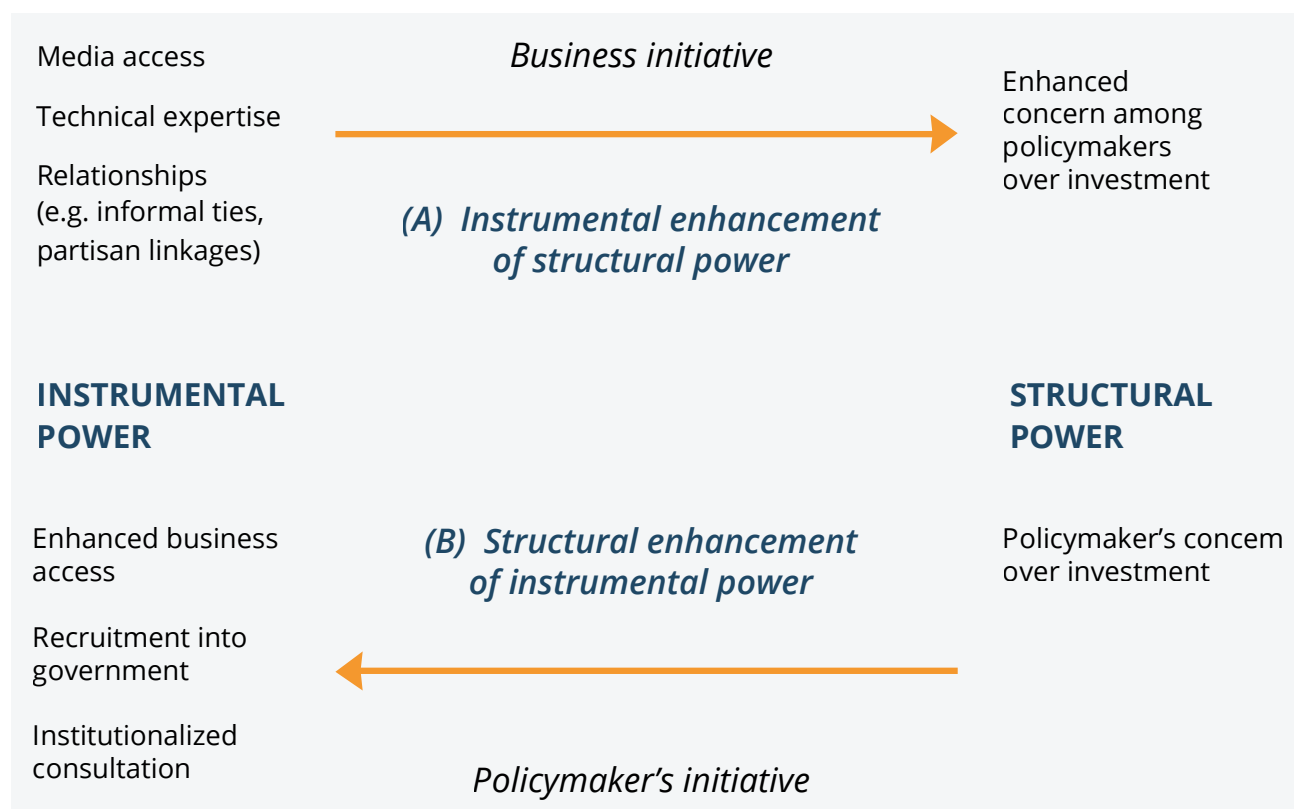
Source: Cárdenas, Julián, "Why do corporate elites form cohesive networks in some countries, and do not in others?. *International Sociology* 2016. Vol. 31 (341-363).

Cárdenas uses the theoretical **networking analysis** to explain how these economic elites, as linking nodes of people and organizations, direct and manage corporations in two ways: by CEO/Directing positions and as shareholders/property criteria. In both cases, there are a set of networks where particular actors are directing diverse holdings (interlocking directorates networking). On the other hand, we can find institutional or individual shareholders investing in several companies, working together to raise interest or share information about profits and economic developments (property networking).¹² When these actors are frequently modern economic elites with great economic sway to change legal/tax framework to increase their power, we refer to Corporate Capture of the State (CCS).¹³

¹² Julián Cárdenas, «Enredando a las elites empresariales en América Latina: análisis de redes de interlocking directorates y propiedad en México, Chile, Perú y Brasil», *América Latina Hoy* 73 (31 de agosto de 2016): 16-17, <https://doi.org/10.14201/alh2016731544>.

¹³ Durand, Francisco, *Cuando el poder extractivo captura el Estado* (Lima, Perú: Oxfam Perú, 2016), 10-12.

Figure 2. Reinforcing relationships between instrumental power and structural power



Source: Fairfield, «Structural Power in Comparative Political Economy»¹⁴

Here, the upper social class cohesion works towards the intertwining of this corporate power where it becomes strategic to be seen as exclusive and to cultivate these ties in relaxed-informal places (i.e. social clubs, private schools, etc.) and events (i.e. weddings).¹⁵

This relationship can be understood if we see instrumental power with a strategic aim within the structural power not instead of it (Graphic 3). Of course, sometimes business influence over policymakers perceptions is so strong that structural power plays a secondary role in protecting business interests. Usually this is not the final objective but instrumental power in Latin America countries is becoming stronger, more sophisticated and faster in its interactions.¹⁶

Durand describes this phenomena as a system with specific mechanisms.¹⁷ When some of these mechanisms aim to “buy laws” by influencing authorities to misuse of the legal frameworks (bribery, digital harassment, any kind of intimidation, etc), he calls these “**undue influence**” mechanisms. When we see other mechanisms such as lobbying, revolving door or political campaign financing, pursuing the creation of ad-hoc laws, rules, and institutional structure, etc, he speaks of “**excessive influence**”.¹⁸ This disproportionate use or misuse of influence over weak governmental institutions determines how deep the capture is from instrumental power to structural power.

¹⁴ Fairfield, «Structural Power in Comparative Political Economy», octubre de 2015, 39.

¹⁵ Domhoff, *Who Rules America?*, 49-51.

¹⁶ According to Fairfield, Structural Power should be understood in market societies as the economic structure based on policy-making institutions and big-historic firms that support every country. The term "structural" relies on economic policies made by the government directly influenced by particular private interests (i.e., GDP contribution. Instrumental power relates specific relationships and resources which help business to influence policy-making more effective.

¹⁷ Durand, Francisco, *Cuando el poder extractivo captura el Estado*, 91.

¹⁸ Durand, Francisco, 87.

Durand also explains how popular SC mechanisms are structured in “themes”, and this means underground networks within all government levels working for private interests according to sector or subject of public policies, including political campaigns priorities.¹⁹ Lobbying is also at the top of SC mechanisms, and this gives way to a vast think-tank/consultant industry in the LAC region. This industry works “softly” within legislative structures as advisory and research support to congress and senate members to improve their legislative performance.²⁰ Once again, this excessive presence is the second category defined by the author.

Hellman & Kauffmann outline a general index identifying 5 forms in which SC operates: 1) legislative capture (parliamentary votes on laws); 2) executive power capture (presidential decrees); 3) Central Bank capture (mishandling of funds); 4) judicial capture (courts decisions) and; 5) capture of political parties (contributions from private interests).²¹

In the case of Corporate Capture practices, they are fueled by low transparency in decision-making processes, corrupt authorities, social mass media associated with corporations and an open infrastructure to divert economic flows to tax heavens. These practices are the ideal landscape for this kind of activity in the LAC region. For some authors, like Tasha Fairfield, speaking about instrumental power between corporations and states, there is a combination of formal/informal relations (lobbying, family, employment recruiting, political party platforms) and resources (expertise, mass media access, investments, donations).²²

State capture literature is tightly related to corruption, as some of these practices are in the same loop. Garay et al. describe how captors have found more sophisticated strategies in order to move forward into the capture of the state, and how this strategies could reduce the risk of punishment against them. Based on that, it clearly shows the profitable aspect of criminal action or state capture.²³ Simultaneously, Olivera uses the corruption instrumental sociology concept to explain how corruption is an institutional, cultural action in governmental spheres and every space with legal or illegal normative power in the Latin American context.²⁴ In the case of Peru (Durand), Colombia (Garay), Central America (Membreño), we need to discuss more profound ways of state capture with economic and political purposes where economic elites and mafias have taken control over weak democracies.²⁵

With this simple framework, we can imagine how easy state capture could be in Latin American regimes' legal and institutional dynamics. Some authors think there is a tiny gap between governmental action spheres and private economic interests. We can now recall how long-term expeditions to former Spanish territories in our region funded by wealthy families' interests along a massive extractive pattern was the first terrain where LAC states were shaped.²⁶ With economic and political structural reforms implemented three decades ago, this tiny gap almost disappeared during the so-called neoliberal period.²⁷ Coincidentally, the most significant investments during and after this period were in mining, oil, telecommunications, electric, and highway infrastructure industries.²⁸

¹⁹ Durand, Francisco, *Cuando el poder extractivo captura el Estado*, 36-37.

²⁰ Durand, Francisco, 38.

²¹ Hellman, Jones, y Kaufmann, «An Empirical Analysis of State Capture and Corruption in Transition», 6.

²² Tasha Fairfield, «Structural Power in Comparative Political Economy: Perspectives from Policy Formulation in Latin America», *Business and Politics* 17, n.o 3 (octubre de 2015): 411-41, <https://doi.org/10.1515/bap-2014-0047>.

²³ Garay Salamanca, *La captura y reconfiguración cooptada del estado en Colombia*, 27.

²⁴ Mario Olivera Prado, «Hacia una sociología de la corrupción», *Revista Probidad*, noviembre de 2001, 10.

²⁵ Durand, Francisco, *Cuando el poder extractivo captura el Estado*, 16.

²⁶ Eduardo Galeano, *Open Veins of Latin America: Five Centuries of the Pillage of a Continent*, 25th anniversary ed (New York: Monthly Review Press, 1997).

²⁷ Harvey, *A Brief History of Neoliberalism*, 2005, 11, 84-85.

²⁸ Moguillansky, Graciela y Bielschowsky, Ricardo, *Inversión y reformas económicas en América Latina*, Primera edición (Chile: Fondo de Cultura Económica, 2000), 50, https://repositorio.cepal.org/bitstream/handle/11362/1658/1/S332672M6961_es.pdf.

2. Quick analysis between SC and other key concepts

The following table is a conceptual exercise to establish some differences between State Capture, Corporate Capture of the State, Corruption, and Macro-criminality approaches. For this paper, we agree with OPM's operative definition of SC 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."***

As we can see in Table 1, SC and CCS are very similar approaches with a broader perspective of the situation described in the operative definition. We can state that CCS²⁹ includes a complete scope on Corporation's activities, including social and cultural events with communities or the strong relationship with academic institutions. **The CCS also observes the capture of international organisms to influence international standards or agreements to impact national/local economics and dynamics (i.e., ILO Convention 169 on indigenous people's rights).**

In contrast, the **corruption**³⁰ framework has wider acceptance and use over the different constituencies interviewed. Even the media analysis revealed an everyday use of corruption to refer to the practices described as SC, while the closest use was provided by Hellman, Jones, Kaufman, and Shankerman as "grand corruption" to separate its use from bribery or "greasy payments."³¹ Nevertheless, the corruption framework offers an abstract, general and short-term perspective of CS or CCS aims and developments. Corruption shows the illegal or immoral side of SC practices.

The newest concept is **macro-criminality** which intends to refer to organized crime actors within structural power and corporations to capture the state or, sometimes, dispute sovereignty spheres with the state.³² According to these scholars, the macro-criminality approach includes territory control and violence within extractive areas and corporate interests.

“The issue with corruption is that public opinion blames more the State when it prevails more within the private sector; this is a structural problem that benefits corporations.”

“El tema de la corrupción, es que la opinión pública culpabiliza más al Estado cuando es en el sector privado donde prevalece más, es un problema estructural que beneficia más a las empresas y así logran la CdE.”

CSO

²⁹ The ESCR-Net defines CCS as “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.”. ESCR-Net. 2014. www.escr-net.org

³⁰ Transparency International defines corruption as: “the abuse of entrusted power for private gain”. Site: www.transparency.org

³¹ Hellman et al. Measuring Governance, Corruption, and State Capture. The World Bank Institute and European Bank of Reconstruction and Development. April 2000. https://www.researchgate.net/publication/23742198_Measuring_Governance_Corruption_and_State_Capture_How_Firms_and_Bureaucrats_Shape_the_Business_Environment_in_Transition_Economies?enrichId=rgreq-ae0d9caf2bf14f2ff3847a7d1d584d09-XXX&enrichSource=Y292Z2XJQYWdIOzIzNzQyMTk4O0FTOjI5Njk4MTUwODQ0NDE2M0AxNDQ3ODE3MzE3ODYy&el=1_x_2&esc=publicationCoverPdf

³² Vazquez Valencia, Luis Daniel, Captura del Estado, macrocriminalidad y derechos humanos. Primera edición. Ciudad de México : FLACSO México : Fundación Böll-México y el Caribe : UNAM, Instituto de Investigaciones Jurídicas, 2019.

Annex B. State Capture analysis by country

“Traditional version of SC says there are some legislators agreeing on being bribed but the reality is that this representatives already are part of grand corruption network since the beginning and they have this positions to represent private interests. In this sense, SC is, in fact, a government system.”

“La versión tradicional de CdE dice que hay legisladores que se dejan comprar pero en realidad son legisladores que ya pertenecen a esta red de corrupción desde el principio, estás en esos puestos para representar esos intereses particulares y en ese sentido la CdE ya es un sistema de gobierno.”

Academic

As mentioned above, in recent years we have witnessed political scandals including bribery, conflict of interests, money laundering, corruption and even organized crime networks linked to governments in LAC. Those cases have revealed the way SC operates. This new cycle of corruption models based on flexible legal barriers and “normalization” of corruption for business purposes is called CEOcracy, which refers to the open participation in these processes of economic elites through instrumental and structural power.³³ What we have now is only a small picture of how corporations fund political campaigns, regional conferences, employment offers, lobbying, revolving doors, favors, gifts, etc. We should also remember how big corporations built offshore enterprises in order to avoid paying taxes, in the Panama Papers scandal in 2016. 140 politicians from 50 countries including, Mauricio Macri, former President of Argentina, were implicated.³⁴

The **Lava Jato** case came to light after a series of investigations, processes, and corruption scandals took place in Latin America, featuring Brazilian companies, mainly Odebrecht. According to Salcedo-Albarán et al., Brazil was a complex structure of interactions that involved public officials, political parties, political leaders, companies and businesspersons in Brazil and at least 906 nodes and 2693 interactions.³⁵ Lava Jato, revealed a regional network of bribery between heads of government like Dilma Rousseff and Inácio “Lula” Da Silva. Some other investigations were ordered after the World Cup in the same year because of big contracts to build infrastructure doubling the price. Here is where the US \$325 million Odebrecht bribery “tsunami” started.³⁶

³³ García Delgado, Daniel, Ruiz del Ferrier, Cristina, y De Anchorena, Beatriz, «Elites y captura del Estado. Control y regulación en el neoliberalismo tardío.», 2018, 97-102, <https://www.flasco.org.ar/wp-content/uploads/2018/11/Flasco-Elites-y-captura-del-Estado.pdf>.

³⁴ International Consortium of Investigative Journalists, «The Power Players: Politicians in the Panama Papers», ICIJ (blog), 31 de enero de 2017, <http://www.icij.org/investigations/panama-papers/the-power-players/>.

³⁵ Salcedo-Albarán Eduardo, Garay-Salamanco Luis Jorge and Macías Guillermo, Velasco Guadalupe, Pastor Christian, Vortex, 2019,

³⁶ U.S. Securities and Exchange Commission, «Braskem, S.A. (Release No. LR-23705; Dec. 21, 2016)», 21 de diciembre de 2016, <https://www.sec.gov/litigation/litreleases/2016/lr23705.htm>.

Odebrecht

Currently known as Novonor, Odebrecht is a Brazilian construction company founded in the 1940s. With its arrival in the Brazilian market, it obtained its first contracts with the government. Since the 1980s, it has achieved an internationalization that places it as a construction giant in LAC, with operations in Europe, the USA, and Africa.³⁷

In 2015, Marcelo Odebrecht, CEO and majority shareholder of the company, was arrested on bribery charges. Marcelo gave out more than 30 MD to several politicians in multiple LAC countries to obtain building contracts in return.³⁸ According to Morales, Odebrecht revealed that corruption reached the highest levels in Latin American politics, involving presidents, left, center, and right-wing parties, and corporate structure.³⁹

In Durand's words, "they operated in a corporate capture system based on a network of influences, resorting to both legal, doubtful and corrupt mechanisms, to achieve excessive and undue influences that privileged and favored them, obtaining high rates of profit and being awarded more public works projects and concessions."⁴⁰ Odebrecht's bribes in Latin America included 12 countries, including the four case studies in this research: Brazil, Colombia, Peru, and Mexico.

COLOMBIA	BRAZIL	PERU	MEXICO
Former Senator Otto Bula was accused of receiving 4,6 million dollars from Odebrecht. However, he said he was just aware of 1 million dollars that he helped to move president Juan Manuel Santos' reelection campaign.	Odebrecht spent more than 320 million dollars in bribes to politicians and other public officials, mainly as donations to electoral campaigns. In this operation, Odebrecht obtained in return nearly 2.250 MD in contracts granted by Petrobras. Michel Temer, Dilma Rousseff y Luiz Inácio Lula da Silva are some of the names that	In Peru, Jorge Cuba, ex Vice-Minister of Communications during former president García's period was accused of undue granting to Odebrecht of the Lima subway contracts in exchange of 2 MD. Besides, Alejandro Toledo, president of Peru 2001-2006 and his wife Eliane Karp were accused of getting bribes from Odebrecht to get	Former PEMEX CEO, Emilio Lozoya Austin, was indicted of receiving around 10 MD to assign contracts to Odebrecht. However, he got the status of protected witness once he mentioned a list of legislators that presumably received bribes to pass a series of amendments in the Mexican regulatory framework, best known as the

³⁷ Morales, Sergio y Morales Oswaldo, «De sobornos a corrupción internacional: el caso Odebrecht», Emerald Emerging Markets Case Studies, vol. 9, no. 3, 2019, 3-4.

³⁸ Ibidem.

³⁹ Morales Oswaldo, ConexiónESAN, 10 January 2018, <https://www.esan.edu.pe/conexion/bloggers/intercultural-management/2018/01/la-corrupcion-me-sonrie-pero-yo-le-pongo-cara-de-palo/>.

⁴⁰ Durand Francisco, «Odebrecht La empresa que capturaba gobiernos», OXFAM-Fondo Editorial Pontificia Universidad Católica del Perú, 16.

	came out during the investigation. ⁴¹	Interoceanica Sur highway, ⁴² as well as Ollanta Humala and Pedro Pablo Kuczynski who resigned Presidency in 2018.	"energy reform". ⁴³
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Source: of our own

In the next section, we describe the national contexts of Mexico, Brazil, Peru, and Colombia to focus on both, structural and instrumental power of critical figures in the SC phenomena. Regarding Central America, we present a regional sketch based on what some interviewees told us about Guatemala, Honduras, and El Salvador. For this part of the research, we will present quick facts on a) extractive industries' role on the national economy; b) mass media use of the SC concept; c) recent SC scandals; d) principal elites capturing the state; e) principal SC mechanisms, and f) quick assessments of regulatory frameworks.

1. Mexico

// Today, there is no regulation strong enough to end SC, because this is not a legal issue but one of a political will."

// Hoy en día no existe ninguna regulación que pueda acabar con CdE o mejorar la situación, porque no es un tema regulatorio, es un tema de voluntad política."

CSO

Mexico is the second largest economy in Latin America with a population of 126 million people, and 95 men for every 100 women.⁴⁴ Mexico's economy has become increasingly oriented toward manufacturing. However the extractive sector still has a significant role in its economy. In 2016, Mexico became member of the Extractive Industries Transparency Initiative (EITI), according to the last EITI report, the oil and gas industry represented 3.5% of the GDP in 2018, compared to 8.0% in 2000, a significant decrease. Mining activities accounted for 2.4% of the GDP in 2018. Gold, copper, silver and zinc are the main commodities in the Mexican mining sector.⁴⁵

⁴¹ Morales, Sergio y Morales Oswaldo, «De sobornos a corrupción internacional: el caso Odebrecht», 2.

⁴² Jiménez Barca, Antonio, «Qué es el 'caso Odebrecht' y cómo afecta a cada país de América Latina», El País, 9 February, 2017, https://elpais.com/internacional/2017/02/08/actualidad/1486547703_321746.html.

⁴³ Manetto Francesco, Beauregard Luis Pablo, «La lucha contra la corrupción de Odebrecht se estrella en México con la sombra de la impunidad», El País, 11 February, 2021, <https://elpais.com/mexico/2021-02-12/la-lucha-contra-la-corrupcion-de-odebrecht-se-estrella-en-mexico-con-la-sombra-de-la-impunidad.html>.

⁴⁴ National Institute of Statistics and Geography (NISG), <https://www.inegi.org.mx/temas/estructura/>.

⁴⁵ Final Report EITI 2018, EY México (Mancera, S.C.), abril 2020, 187-189. https://eiti.org/files/documents/eiti_-_informe_final_2018.pdf.

Regarding the national **oil industry**, in 2013 Mexico passed a constitutional reform that opened doors to private investment in the Mexican oil and gas sector which had been under state control since the nationalization of the oil industry in 1938 and the foundation of the Mexican Oil Company (PEMEX by its initial in Spanish). One of the central aims of the 2013 reforms was supposedly to bring transparency to how the sector is managed, from awarding licenses to collecting revenues from the companies to the use of those revenues. Since 2016, Mexico has conducted a series of bidding rounds to allocate oil and gas concessions.⁴⁶

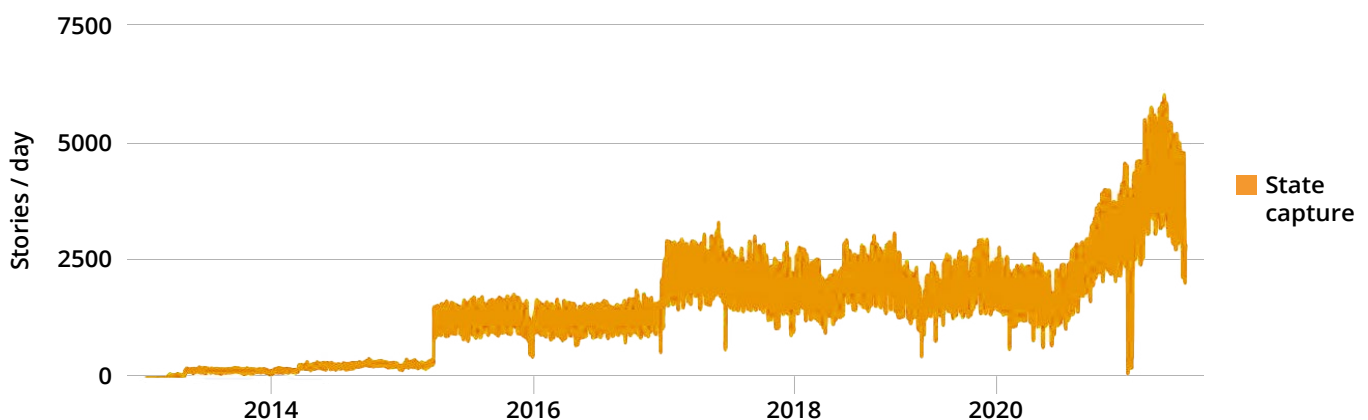
This industry has gone through different stages. After the nationalization of oil there was a sustained period that during the 1970's and 1980's had a significant increase on the production of crude, and was the engine propelling of economic growth. It should be noted that to a large extent public revenues depended enormously on this industry but during the last years oil revenues have decreased.⁴⁷

Regarding the **mining** sector, the current Mexican Mining Act dates back to 1992. According to Cárdenas, it not only deviates from the Constitution but from the juridical constitutional history. There was a wide consensus among respondents to our interviews, who pointed out that the 1992 Mining Act violates human rights of indigenous communities and shows that company investors were the only beneficiaries, at the expense of indigenous people, agrarian communities and people in general.⁴⁸ For instance, according to Cárdenas, article 6 is the cornerstone in mining legislation which allows economic criteria to prevail over constitutional and fundamental rights. Mining is considered as public utility and is a preferential activity over other types of economic activities.⁴⁹

a) State capture

SC is a concept that has attracted more attention from public audiences during the last years. It is seen as a form of corruption that occurs in high spheres of power. Even though SC was not widely used in media, we perceive a significant increase in the recurrence of news referring to Cleptocracy, Corruption or Power Mafia from 2016 up to now, **coinciding with the corruption scandals during the Presidency of Enrique Peña Nieto.**

Graphic 6. MediaCloud SC in Mexico



⁴⁶ Extractive Industries Transparency Initiative (EITI), <https://eiti.org/mexico>.

⁴⁷ Puyana Alicia, El petróleo y el crecimiento económico ¿un recuento de oportunidades perdidas?, núm. 361, nov-dic 2009, 101. <http://132.248.45.5/publicaciones/econinforma/pdfs/361/07aliciapuyana.pdf>.

⁴⁸ Cárdenas Jaime, The mining industry in Mexico: the dispossession of the nation, Constitutional Issues, 28, Jan-Jun, 2013, http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1405-91932013000100002.

⁴⁹ Ibidem.

Subsequently, more corruption cases came to light that year, such as the **Panama Papers, which revealed a series of corrupt networks and tax heavens in which many Mexican businesspersons were involved.** That same year, the Odebrecht case revealed improper ties between governmental officers and the company. One of our assumptions is that those events are the grounds on which SC started to appear in the Mexican national media. However, for some of our respondents, SC is still a unknown concept not just for common people but for CSO's as well.

b) Interview findings

Most of the people interviewed were members of national and global civil society organizations involved in natural resources governance, environment protection, human rights, transparency and accountability, as well as think tanks, universities, and former public officials and company associations. An opinion shared by all persons interviewed (45% women and 55% men. This proportion reflects the number of individuals who responded to our interview) is that the existence of elites or powerful groups that are close to the government authorities and from which they have improperly benefited is undeniable.

In Mexico, state capture is a complex and systematic phenomenon. During the interviews we realized SC has complex operation structures and it is broader than corruption. For some persons, it is large-scale corruption that operates through intricate criminal networks in which economic elites, organized crime and politicians interact with the aim to economically benefit themselves. Some scholars affirm that SC is part of the different concepts that have been used to define corruption and should be understood as the illegitimate appropriation of the public, not only an individualized capture because in reality it ends up being part of the political system, that makes it systematic and not situational, which makes it much more difficult to fight.⁵⁰

The role Mexico plays in North America geopolitics has determined international corporation's influence on human rights. SC couldn't be fully understood without considering foreign interests. According to a CSO's energy governance expert, there is an international legal structure that allows multinational corporations to impose their rights over human rights. In the former North America Free Trade Agreement (NAFTA), article 11 on investment and now with its newest version, United State of America-Mexico-Canada Agreement's (USMCA) investment chapter 14, companies have been given the right to take legal actions demanding damages against the state.⁵¹ In certain cases this could be seen as a way to impose private interests over the rights of indigenous people and local communities.

In Mexico, many of the interviewees considered that SC is mainly exerted by corporations and powerful economic elites rather than other groups. Although, almost all of the respondents identify political parties, the military and organized crime, particularly drug cartels involved in the SC, there is also a widespread perspective that points to economic elites as the main group with the capacity to influence the design of laws, regulations and public policies.

⁵⁰ Interview, 11 February, 2021.

⁵¹ Calderón Salazar, Jorge Alfonso, «Análisis preliminar de los capítulos de inversión, energía, agricultura, servicios financieros y tipo de cambio en el Tratado entre México, Estados Unidos y Canadá (T-MEC)», Economía Informa, Enero-Febrero 2019, 414, 26, <http://www.economia.unam.mx/assets/pdfs/econinfo/414/02Analisispreliminardeloscapitulosdeinversion.pdf>.

Regarding the **Mexican elites** capturing the state, Cárdenas' corporate networking analysis registered a strong cohesion within the 50 biggest holdings. This means there is a strong connection between holdings via CEO and management positions to align business strategies.⁵² The Mexican Business Council (MBC, formerly known as the Mexican Council of Businessmen) for instance is perceived as a highly influential corporate group on the Mexican government. At least 2 people interviewed indicated that both the MBC and the Business Coordinating Council (BCC) are two entities that bring together an influential group of who on many occasions influence the design of policies through their instrumental power, allowing them to enter into direct negotiations with the high profile public officials and even the President.

In the mining sectors, for instance, according to one of the expert interviewees, it was believed that the greatest influence historically is exerted by transnational companies of Canadian origin. However, it has been observed that "within the companies that have benefited from the 1992 mining law are Grupo México and Peñoles, both corporations with national capital".⁵³

Mechanisms to capture consist both of licit and illicit. Lobbying is one of the licit mechanism elites use to capture. It implies a constant influence on the legislative branch, not only through proposals that openly benefit companies or eliminate obstacles so that they can operate more freely, but a constant presence of business consultants in the discussions of the legislative branch to keep abreast of initiatives that are more progressive or that may represent greater protection to the environment or formulate tax reforms. At least two persons from global NGO's agreed lobbying in the executive is more pernicious because it is not as visible and because it occurs in ways that prevent the operation of regulatory or control entities.

In addition, at least 5 people we interviewed told us that the elites exert capture mechanisms such as **revolving door**; 9 people mentioned **lobbying**; **corruption** and **bribery**, 6. They also mentioned campaign financing, means of cooptation, trafficking of influences and impunity.

In the extractive sector, SC has led to cooptation of public policies. Consultation protocols are not enough, there is no follow-up of international standards for free and informed consultation. Environmental and social assessments made by the same mining or gas company that implements a mega-project are accepted; independent assessments are not taken into account. One of the main concerns among CSO representatives is that there is a series of bad practices aimed at approving mega-projects, green-lighting them without proper prior consultation, or by conducting "consultations" that are only simulations.

⁵² Cárdenas, «Enredando a las elites empresariales en América Latina», 22.

⁵³ Interview, February 24, 2021.

c) Civic Space

There is a shared perspective among civil society organizations that suggests that civic space is threatened by a disagreement between discourse and reality. Under this idea, some people pointed out that there are formal attempts to include the opinion of CSOs, however, in reality there are many attempts to dismantle the discourse of human rights and participation mechanisms such as the deficient system of access to public information and transparency. There are a lot of obstacles to get accurate information on mining projects for instance. There is no access for CSOs to discussion spaces with government. Actually, there have been cases of spying against CSOs and human rights defenders. In the extreme cases, persons and defenders of territory and land have been murdered, such as Samir Flores case who opposed to Huexca, Cuautla, Morelos, thermoelectric project.⁵⁴

In the case of the extractive sector there is a narrative that imposes a hegemonic discourse on what development is supposed to mean, and that is compatible with corporate interests against human rights defense. Actually, some of the respondents said there is a close relationship between companies and the Undersecretary of Mines that far from acting as an independent authority, sometimes he acts as a promoter of extractive business, encouraging the discourse that criminalizes civil society organizations that seek to balance power.⁵⁵

d) Gender Perspective

There is consensus among respondents that women's participation in the extractive sector is limited. Some of the opinions addressed the fact that men have historically dominated the extractive sector. For some women interviewees who hold positions in the private sector, there has been an increase in the participation of women in relevant spaces; however, the powerful and decision-making positions remain under the control of men. An exciting aspect has to do with the fact that for some interviewees, SC is a phenomenon that, in principle, has responded to a purely male dynamic and is based on the patriarchal pact. It is not a coincidence that the BCC had been an entire male space until just a few years ago, reflecting the absence of women in powerful, influential groups. However, as some of the respondents said, SC does not depend on the number of women holding relevant positions. There could be places where women are well represented but still exerting SC mechanism. So SC does not have anything to do with women's presence but with the way power dialogue is exerted in a patriarchal code.

In addition to the above, **SC's impacts on communities and indigenous people affect women differently than men. Some of the elements that put women at a disadvantage are that "they do not own the land, they are not ejidatarios; when we talk about issues of violence, they are the most seriously affected, and those who make decisions are men."**⁵⁶

⁵⁴ Samir Flores: el asesinato en México de uno de los principales activistas contrarios a la termoeléctrica de Morelos que el gobierno de AMLO somete a consulta este fin de semana, BBC News Mundo, 21 February 2019, <https://www.bbc.com/mundo/noticias-america-latina-47313937>.

⁵⁵ Interview, January 25, 2021.

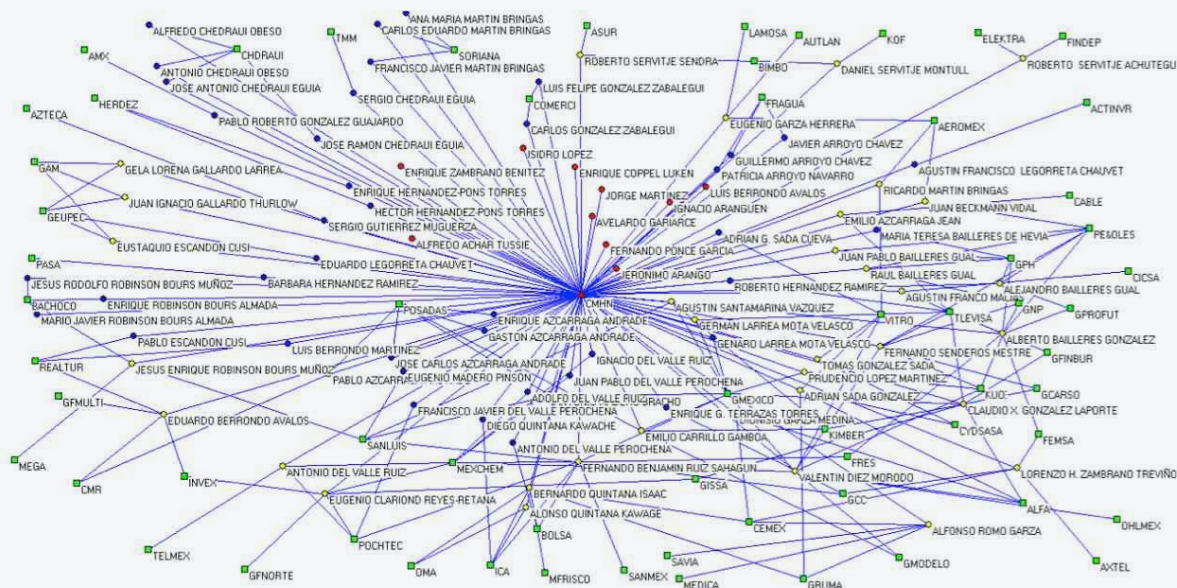
⁵⁶ Professor-Researcher, interviewed 24 February, 2021.

The Mexican Council of Businessmen (CMHN)

The CMHN was formed in 1962 as a response to socialist left wing movements in the country and the region (i.e. Cuba 1959). The aim was to open a collective dialogue with President López Mateos to stabilize the economy and promote a positive image among foreign investors. But Cokelet describes it better: “Private access to public decision-making in exchange for business legitimization of the presidency”. In 1975, the growing economic sectors (agriculture, services, small industries) joined CMHN to create the Business Coordinating Council, or CCE to become the principal channel of communication between business and government with strong technical expertise to conduct on intensive lobbying in the highest levels of Mexican politics.

This new era was led by the bank nationalization in 1982, when CMHN became publicly involved in business affairs to cancel nationalization policies. This lobbying opened the door to the political and structural reforms known as neoliberalism. As a result, during the 1990's major sectors such as airlines, telecommunications, extractives, financial institutions, shifted to the private sector. In 1995, CMHN announced its commitment to contribute 10-15% to total private investments annually. Between 2001 and 2008 CMHN suspended this annual commitment to contribute to the private investment branch as it lost its trust in the presidency's capacities to manage the Mexican economy.

“More than a chamber, CMHN is the elite of elites associations in the region. Collectively and individually, this organization have access to the highest levels of government”. Between 1989 and 2009, its economic power has represented between 15-27% of Mexican GDP and holds around 60% of shares traded in the Mexican Stock Exchange where 48 of these shareholders were related through family ties. In 1998, ten of the largest 100 holdings in the country, concentrated 40% of total assets and 50% of total sales. It reflected a “legal monopolization” of the economy. In its early years, the CMHN invested in the consolidation of the liberal ideology. Carrillo describes the economic support from the CMHN to universities and newly formed mass media enterprises, while at the same time playing a key role in the 70-year hegemony of the PRI.



Sources: Cokelet, Benjamin, "El consejo Mexicano de Hombre de Negocios: la política de negocios, las élites y la toma de decisiones en México: www.poderlatam.org: August 2013.

2. Central America

In Central America (CA), we concentrate on Guatemala, Honduras, and El Salvador. As in many countries in Latin America, extractive activities began in the colonial period and continue until the 20th century. Although extractive activities have not been relevant to the regional economy in recent history, they appear to have a more relevant role during the last years, with governments trying to promote it to diversify the economy. Guatemala and Honduras currently participate in the Extractive Industries Transparency Initiative (EITI).

On the other hand, extractive industries in Central America have been signaled as responsible for several environmental damages and human rights violations against indigenous people and communities in the region.

a) Guatemala.

Based on the 2018 census, Guatemala's population is estimated at 14,901,286 persons, which places it as the more populated country in Central America.⁵⁷ In Guatemala, extractive industries were not the center of the economy, so the government promoted them after the 1979 crisis to diversify the national economy.⁵⁸ The extractive sector, according to the latest Guatemala EITI report, represented 1.5% and 1.2% of GDP for 2016 and 2017.⁵⁹ Regarding oil production, in 2016, 3.3 million barrels were produced and increased in 2017 3.5 million. However, it is a limited activity, and until 2015 more than 90% of the production originated in San Andrés, Petén, operated by Perenco Guatemala Limited. In the mining sector, it has shown an increase in production in the last years. At least 95% of the total production comes from metallic minerals (mainly gold, silver, lead, zinc, and nickel) and the rest from non-metallic minerals for construction.⁶⁰

b) Honduras

With a population of 9,416,634, Honduras is the second most populated country in the region.⁶¹ According to the World Bank (WB), in the last years, Honduras reached the second-highest levels of economic growth in Central America.⁶² However, the weight of extractive industries in the economy is small and is concentrated basically in mining. In recent times, there has not been any extraction of oil and gas in the country. On the other hand, from 2014 to 2018, the mining sector contributed to the national economy with an average of 0.2% to the GDP (402 million Lempiras or USD 16.4 million).⁶³

c) El Salvador

El Salvador is the smallest country in CA, with 6.4 million inhabitants and an annual GDP average growth of 2.3 percent.⁶⁴ In El Salvador, extractive activities are concentrated mainly in mining. During the eighties, in the context of the armed conflict, mining activities in San Sebastián were suspended. The practice of artisanal mining remained only in a few places,

⁵⁷ Instituto Nacional de Estadística Guatemala, <https://www.censopoblacion.gt/cuantosomos>.

⁵⁸ Álvarez Mauricio, et al., *El extractivismo en América Central. Un balance del desarrollo de las industrias extractivas y sus principales impactos en los países centroamericanos*, Friedrich Ebert Stiftung, 2015, p.6, <https://library.fes.de/pdf-files/bueros/fesamcentral/11626.pdf>.

⁵⁹ Cuarto informe Nacional de Conciliación EITI.-Guatemala, 2016-2017, p.27, <https://eiti.org/files/documents/cuarto-informe-nacional-2016-2017.pdf>.

⁶⁰ Álvarez Mauricio, et al., *El extractivismo en América Central*, p. 62.

⁶¹ Instituto Nacional de Estadística Honduras, <https://www.ine.gob.hn/V3/>.

⁶² The World Bank, Honduras, <https://www.bancomundial.org/es/country/honduras/overview>.

⁶³ EITI Honduras, IV Informe de Conciliación 2017-2018, p. 48, https://eiti.org/files/documents/iv_informe_de_conciliacion_eiti_hn_2017-2018_v_7_febrero_eiti_hn_.pdf.

⁶⁴ The World Bank, El Salvador, <https://www.worldbank.org/en/country/elsalvador/overview>.

performed by persons better known as “güireseros”.⁶⁵ During the nineties, a new boom in metallic mining took place, and subsequent administrations intended to promote minerals extraction. In that context, the current mining act was approved to attract foreign investors to the country. However, several social actors have a strong sentiment that mining has been responsible for environmental damages and social conflicts throughout the country. So, as in Costa Rica, different social, political, and religious sectors fought for the government to ban metallic mining in their territories.⁶⁶

d) SC in Central America

In Guatemala, according to an interviewee, civil society organizations and other sectors usually refer to the term “cooptation of the state” more than state capture when illicit political-economic structures influence decision-making by the Executive, law-making, justice administration, public work control, and public money investment.^{67 68} In addition, in Guatemala those who capture the state are not only powerful business groups but illicit ones better known as Cuerpos Ilegales y Aparatos Clandestinos de Seguridad (CIACS) and Redes Político-Económicas Ilícitas (RPEI).⁶⁹

In El Salvador, some of the journalist interviewed referred illegal linkages between political actors and drug-related criminal structures (gangs) that seek territorial control over the life's persons, and an enormous influence from ancestry families with significant economic power; a phenomenon that has expended in Honduras, for instance.^{70 71} So in CA we found references to this phenomenon, bribery, corruption, and public officials involved with organized crime structures. There were also references to licit mechanisms of cooptation and influence, such as the lobby, revolving door, and the use of gremial associations.

In her work, Rodríguez Quiroa found that the corporate sector in Guatemala has a real influence on state decision-making on their interests. They have political support (legislative and executive branches). They have held at least 58 board seats on different state institutions that allow them to shape the regulatory system of transactions and get first-hand information on laws, agreements, and regulations. This way, the business chambers' participation in public policy-making places is assured.⁷²

Regarding extractive industries and SC, during the nineties, the governments encouraged the installation of transnational corporations to promote mining exploration. One example that our interviewees brought up is Minera San Rafael, in Guatemala, owner of El Escobal mine allocated in San Rafael Las Flores, Santa Rosa Department, subsidiary of Tahoe Resources in that time until the Canadian Pan American Silver bought it. The project was widely questioned by different social sectors and local communities for not complying with the prior, free, and informed consultations of the affected communities and pointed out as an example of capture because the government was pointed out to benefit the company in

⁶⁵ Álvarez Mauricio, et al., *El extractivismo en América Central*, p. 037.

⁶⁶ *Ibidem*, p.034.

⁶⁷ Shetemul Haroldo, *La captural del Estado*, Prensa Libre, August 30, 2019, <https://www.prensalibre.com/opinion/columnasdiarias/la-captura-del-estado-2/>.

⁶⁸ Interview, CSO's representative, January 25, 2021.

⁶⁹ Comisión Internacional contra la Impunidad en Guatemala, *Guatemala: Un estado capturado*, https://www.cicig.org/wp-content/uploads/2019/08/Informe_Captura_Estado_2019.pdf.

⁷⁰ Interview, Journalist, February 5, 2021.

⁷¹ Oqueli, Jeffry, *Guatemala: Hacia la reconfiguración cooptada de un Estado capturado*, *Nómada*, July 2020, <https://nomada.gt/blogs/guatemala-hacia-la-reconfiguracion-cooptada-de-un-estado-capturado/>.

⁷² Rodríguez Quiroa, Luisa Fernanda, *Empresarios con poder: al menos 58 instancias del Estado en las que las cámaras tienen voto o voz*, January 30, 2018, <https://www.plazapublica.com.gt/content/empresarios-con-poder-58-instancias-del-estado-en-las-que-las-camaras-tienen-voz-y-voto>

exchange for part of its revenues.⁷³ On July 5, 2017, activities of the mining company were suspended by resolution of the Supreme Court of Justice (CSJ), which later reversed its decision, but then there was a suspension by the Constitutional Court (CC) in that same year. The people of Xinca have not been adequately involved in the consultation process by the authorities, and there have been several violations of their human rights.⁷⁴

Another aspect that some of the respondents brought to the discussion was that it is necessary to strengthen transparency and accountability mechanisms in some countries. It is challenging to obtain specific information on mining corporations' revenues and their contribution to the tax system. At least in Honduras, average incomes taxes from mining activities are below the Latin American rate.⁷⁵ Besides, in El Salvador, as in other countries, environmental control and regulation are still weak and could allow SC to happen. So, in the words of an activist, "effective social watchfulness and participation could reduce and bring SC to light".⁷⁶

The criminalization of environmental and human rights defenders is an extremely concerning issue throughout Central America, and it has increased in recent years. There is a shared opinion among respondents that powerful actors such as big corporations and private consultancies, under guise of "development" generate narratives that stigmatize organized civil society and communities, exposing them to risk.

3. Brazil

The Federative Republic of Brazil has an estimated population of 212,765,595 million inhabitants.⁷⁷ In 2019, GDP at current prices reached around 1.85 trillion dollars, which placed Brazil as the 9th world economy in terms of GDP.⁷⁸ However, with the arrival of the COVID-19 pandemic, in December 2020 the Central Bank of Brazil announced that during that year there was a contraction of the economy of 4.4%.⁷⁹ Brazil has abundant natural resources. It is the world's third largest exporter of agricultural products, leading exports of coffee, soybeans, beef and chicken, orange juice and sugar. The five main groups in Brazilian agribusiness exports in 2019 were: soybeans (US \$ 32,627 million), followed by beef and chicken (US \$ 16,302 million), corn (US \$ 7,756 million), sugar (US \$ 5,172 million dollars), and coffee (5.115 million dollars).⁸⁰

Regarding **mining**, as a result of the launch of the 2030 Mining Plan by the Ministry of Mines and Energy (MME), the Brazilian mining sector has brought in significant foreign

⁷³ Álvarez Mauricio, et al., *El extractivismo en América Central. Un balance del desarrollo de las industrias extractivas y sus principales impactos en los países centroamericanos*, p. 074.

⁷⁴ Bolaños, Rosa María, *Minera San Rafael cumple 2 años suspendida y se lanzan dudas sobre el futuro de la minería en Guatemala*, Prensa Libre, July 5, 2019, <https://www.prensalibre.com/economia/minera-san-rafael-cumple-2-anos-suspendida-y-se-lanzan-dudas-sobre-el-futuro-de-la-mineria-en-guatemala/>.

⁷⁵ Álvarez Mauricio, et al., *El extractivismo en América Central. Un balance del desarrollo de las industrias extractivas y sus principales impactos en los países centroamericanos*, p. 087.

⁷⁶ Interview, Guatemala CSO's representative, January 25, 2021.

⁷⁷ Instituto Brasileiro de Geografia e Estatística (IBGE), *Populacao*, https://www.ibge.gov.br/apps/populacao/projecao/index.html?utm_source=portal&utm_medium=popclock&utm_campaign=novo_popclock, consultado en marzo de 2021.

⁷⁸ Oficina económica y comercial de España en Brasilia, *Informe económico y comercial Brasil*, <https://www.icex.es/icex/es/navegacion-principal/todos-nuestros-servicios/informacion-de-mercados/paises/navegacion-principal/el-mercado/estudios-informes/inf-economico-comercial-brasil-2020-.html?idPais=BR> septiembre de 2020, p. 46

⁷⁹ *El Economista*, *Economía brasileña caería 4.4% y ya no 5% este 2020, ajusta el BC*, en <https://www.eleconomista.com.mx/economia/Economia-brasilena-caeria-4.4-y-ya-no-5-este-2020-ajusta-el-BC-20201217-0113.html>, 17 de diciembre de 2020.

⁸⁰ Oficina económica y comercial de España en Brasilia, *Informe económico y comercial Brasil*, p. 17

investment, mainly Canadian and Chinese groups, with no current restrictions on the exploitation of national mining deposits by foreign companies.⁸¹

Regarding **hydrocarbons**, in recent years have been “Brazilianized”, since on the one hand they have been open to foreign investment, while a certain protectionism develops with the appearance of national Brazilian companies or through the creation of new public companies. The Ministry of Mines and Energy created the National Petroleum Agency (ANP) and the Brazilian Company for the Administration of Petroleum and Pre-salt Gas (within Petrobras), created in 2013 to manage production contracts for exploration and production of oil, natural gas and other hydrocarbons.⁸²

a) Interview findings

In Brazil the research team interviewed mainly CSO’s representatives and persons from public service (75% women and 25% men). **SC in Brazil, according to our interviewees, is not a term that is used in mass media, so debate and discussion around it is not open at all.** The public sector considered the concept was unknown until now, referring more frequently to corruption. According to one interviewee, “it is a term that remains restricted to the academic sphere”.⁸³ This is consistent with the research we carried out based on the analysis of the media and from which we could observe that the number of news items that match with the term SC is not significant. Starting in 2014 there is an increase in the news and also a similar frequency in the mention of SC in consecutive years, possibly linked to the corruption cases that were uncovered.

In 2020, mentions of SC became more frequent and we found a definition of the concept: “it is a series of mechanisms that, at the cost of an open, equitable, transparent and democratic debate, impose the interest of [private] actors in society as a whole to the detriment of the public interest.”⁸⁴

The influence of the elites, according to our respondents, is notorious since the formation of the Brazilian State. While in some countries political movements were decisive in the participation of society, in Brazil society remained on the fringes of these movements and it was a set of elites who formed the Brazilian State. Thus, “Brazil was born as a state captured by powerful families”.⁸⁵

SC in Brazil is perceived as those ties that occur mainly between conservative groups that are closely linked to businesspersons and other religious groups. This is widely shared by the interviewees, who also indicated that SC refers to economic sectors that dominate state bodies for their economic benefit, such as extractive companies, oil, mining and agro-industry.

⁸¹ Ibidem.

⁸² Ibidem.

⁸³ CSO’s member, interviewed 27 January 2021.

⁸⁴ “Como a captura corporativa da política brasileira faz a boiada passar”, UOL o melhor conteúdo, 25 de agosto de 2020, <https://congressoemfoco.uol.com.br/opiniao/colunas/como-a-captura-corporativa-da-politica-brasileira-faz-a-boiada-passar/>

⁸⁵ CSO’s member, interviewed 27 January 2021.

// "When we talk about SC we refer basically to corporate capture, how this interaction between capitalism and democracy occurs".

// "Cuando hablamos de CdE, nos referimos básicamente a la captura corporativa, cómo sucede esta interacción entre capitalismo y democracia".

CSO

Additionally, there is a perception that **the extractive sectors are dominated by international corporate interests**. There is significant international control over the entire extractive sector: mining and hydroelectric energy are highly privatized and in the hands of French and Basque companies, among others. According to CSO's, financial capital goes a long way in controlling the land in the Amazon, there is also a strong presence from international private pension funds, especially European and recently Chinese capital.⁸⁶ Actually, it has been part of a report presented by Indigenous Organizations Coordinator in the Amazon Basin (COICA by its initials in Spanish) on human rights violations of indigenous population in the Amazon basin by Chinese Investments. Particularly, the report takes Teles Pires and Sao Manoel Dam on Teles Pires River case on Brazil.⁸⁷

In the energy sector, during the Bolsonaro administration, the Development Bank of Brazil (DBB) started the sale of its Petrobras shares to "reversing the growing influence of the government in the largest economy in the region."⁸⁸ For years, state owned Petróleo Brasileiro S.A. (Petrobras) had become one of the most important companies in the world, which allowed to guarantee the energetic security in Brazil. Petrobras was subject of partial privatization during the application of neoliberal policies, particularly during the Fernando Henrique Cardoso Presidency, the State participation was reduced.⁸⁹ For many analysts, this aperture brought the company the mechanisms to assure efficiency, autonomy and, transparency.

The success of the state-owned company was linked to: a. design of industrial policy by the state; b. strategic planning; c. specific legislation that allow for reviewing, supervising and sanctioning its regulatory bodies such as the ANP; d. hiring supplier companies through a financial system that provides credit facilities; e. openness to private investment by national or foreign companies.⁹⁰

⁸⁶ Interview, CSO's representative, February 19, 2021.

⁸⁷ Vulneraciones a los derechos de los pueblos indígenas en la cuenca amazónica por ls inversiones chinas, COICA, 2018, https://www.ambientey-sociedad.org.co/wp-content/uploads/2018/11/Informe_EPU_China_-vulneracion_derechos_humanos_-pueblos_ind%C3%ADgenas-cuenca-amazonica.pdf

⁸⁸ Mendonca Heloísa, «Bolsonaro profundiza su apuesta privatizadora con al venta de más de 6.000 millones en acciones de Petrobras», El País, https://elpais.com/economia/2020/02/11/actualidad/1581444088_625713.html

⁸⁹ García Ribeiro, Cássio, Tahan Novaes, Henrique, Petrobras 60 años: avances y retrocesos en el desarrollismo brasileño, América Latina Hoy, vol. 72, 2016, p. 50, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwjegc3B-lwwAhUJbawKH-SorBQQQFjAAegQIAhAD&url=https%3A%2F%2Fwww.redalyc.org%2Fpdf%2F308%2F30845990004.pdf&usg=AOvVaw1JrLWNLx5p3VO87M5Kr_7O

⁹⁰ Huerta Durán, Carlos, Ruíz Alarcón, Fluvio, Petrobras: petróleo, finanzas públicas y desarrollo, Análisis, May-August 2012, p. 123-124.

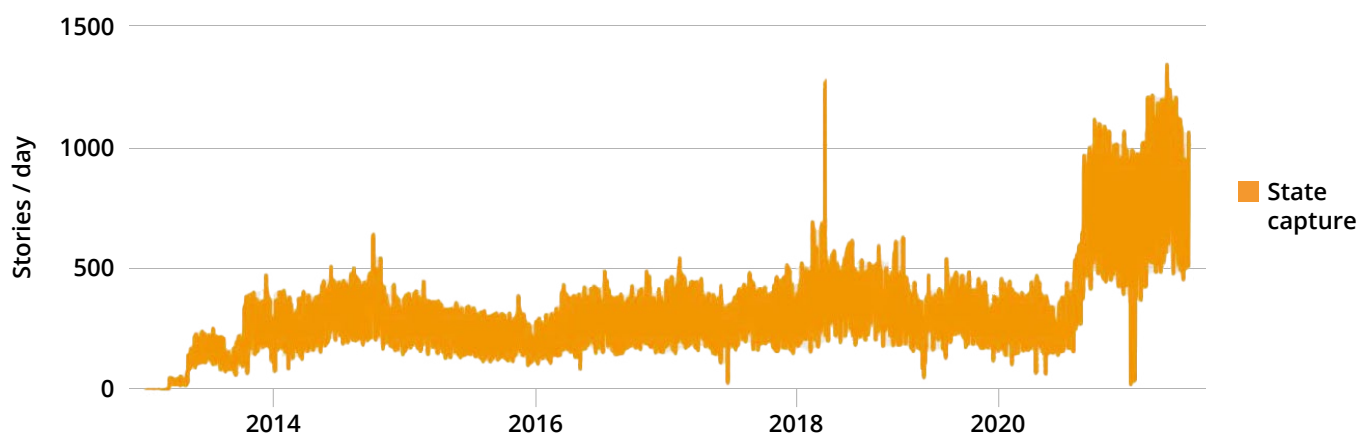
Nonetheless, in 2014, the cases of corruption inside the company came to light and several company officials were detained, and accused of having links with money laundering organizations and to having benefited construction companies with public contracts.

Some of the interviewees pointed out a series of normative changes in Brazil have been taking place, aimed at benefiting private companies and reducing State participation in decision-making. According to our respondents, the exploration policy used to be decided by the state-owned company, Petrobras. However, the state has gradually limited its decision-making in reference to oil exploration, opening the private influence.⁹¹

During the Bolsonaro administration Petrobras has started a privatization process that includes the sale of several power generation companies in which Petrobras participated. Besides, dozens of oil fields, platforms, refineries, and terminals are also being sold, which has opened a confrontation between the oil workers and the Bolsonaro government. According to Lanfredi, the current privatization process is the most potent attack on any state-owned company since the sale of Vale do Rio Doce by Cardoso.⁹²

Some attempts were made in past administrations to democratize the state, such as not receiving direct financing in political campaigns. Regarding transparency in public administration, significant progress was also made, and the creation of structures for the granting of licenses. Nonetheless, the interviewees agreed that **with the arrival of the current administration, the relationship with private interests against citizens has been deepening, achieved through the dismantling of progressive public policy**. There is a tendency to relax the legislation that regulates the extractive sector at the federal level. For example, environmental impact assessments are carried out by companies and not by the state, so there is a strong feeling that there are no controls towards companies and their environmental and social impacts.

Graphic 7. MediaCloud SC in Brazil



⁹¹ Interview, CSO's representative, 29 January 2021.

⁹² Lanfredi, Leandro, Privatizaciones en Brasil. La lucha de los petroleros de Brasil ante la privatización de Petrobras, La izquierda diario, <http://www.laizquierdadiario.com/La-lucha-de-los-petroleros-de-Brasil-ante-la-privatizacion-de-Petrobras>.

Vale's dam disaster in Brumadinho

In January 15, 2019, in Brumadinho, metropolitan region of Belo Horizonte, state of Minas Gerais, **Córrego de Feijão mine's dam, property of Vale S.A., broke down and 13 millions of cubic meters were spilled, causing the death of at least 270 persons.**⁹³ This event affected the lives of communities and inhabitants, polluting rivers and forests for over a month with devastating long-term consequences.

In 2015, another Vale's mine located in Mariana had already been involved in a similar catastrophe that led to 19 deaths and huge environmental damages, caused by waste from a river that erased two cities and finally reaching the Atlantic ocean.⁹⁴

Recently, Vale S.A. and the general prosecutor reached an agreement in which the company must pay 6.800 MD to repair damages caused to the environment in Brumadinho.

Profile: Vale S.A. is the biggest steel producer in the world, with operations in at least 30 countries with a total of 79,646 employees. In addition to mining, Vale works with logistics-railways, ports, terminals and state-of-the-art infrastructure-, energy, and steel making.⁹⁵

For Cárdenas, corporate networking in Brazil is the most dispersed of the region, meaning there is less integration or connection between holdings and instrumental powers.⁹⁶ This shows a weak cohesion and opens several SC channels coming from a wide range of elites. The mechanisms that our respondents identify can be summarized as lobbying, revolving doors and legal or illegal campaign financing and traffic of influences. Additionally, CSOs pointed out cases in which legal consulting firms working for companies managed to have direct influence on legislators to make changes in legislative proposals on mining to the detriment of human rights in favor of companies.⁹⁷

b) Civic space

There is a strategy used by conservative sectors linked to businessperson and religious groups, which involves accusations against civil society organization of being responsible for state capture, through a cultural war to impose an international agenda that does not belong to Brazil. This strengthens a narrative against human rights advocacy and land protection.

According to the CSO's perspectives and practical experience, there are no joint participation spaces that include civil society, government and businesses. One example is the reluctance of Brazil to join EITI. In fact, with the arrival of the new government, the work carried out in the National Human Rights Council, in which both civil society and the state participated, was sabotaged and has currently been closed to participation.⁹⁸

⁹³ Romero Mar, «Brumadinho bajo el lodo: se cumple un año de la tragedia de Brasil», france24, <https://www.france24.com/es/20200125-brumadinho-bajo-el-lodo-se-cumple-un-a%C3%B1o-de-la-tragedia-en-brasil>.

⁹⁴ La industria minera de Brasil: tragedias y enormes recursos, Gestión, <https://gestion.pe/economia/empresas/industria-minera-brasil-tragedias-enormes-recursos-257462-noticia/?ref=gesr>.

⁹⁵ See, Vale website on <http://www.vale.com/EN/aboutvale/Pages/default.aspx>

⁹⁶ Cárdenas, «Enredando a las elites empresariales en América Latina», 23.

⁹⁷ Interview, March 11, 2021.

⁹⁸ Ibidem.

c) Gender perspective

It is a shared idea that women have faced the effects of state capture in different manners. The inequality gap widens in an inversely proportional relationship to the wealth and power of large companies, and this affects women. That's why a gender perspective should be taken into account at all levels because the capitalist system was design by men and was meant not to include women.⁹⁹ Including women in positions of power in companies, for instance could help to a certain extent. However, according to respondents, the focus has to be aimed at reducing the overall effects of state capture.

“There is a SC phenomena at an international level. Inside the multilateral system, companies pushed some initiatives arguing a more participatory approach of natural resources governance. In this sense, multi-stakeholder initiatives only legitimate corporations interests. In sum, by action or omission this system internalized as “natural” the approach where the corporations belong to the solution instead of the problem.”

“Existe una CdE a nivel internacional, ya que con el debilitamiento del sistema multilateral comenzaron a surgir iniciativas por parte de las empresas en varios sectores, en una lógica de supuesta participación y comenzaron a reemplazar la gobernanza unilateral por una mixta, en ese sentido, es una captura pero distinta en donde el poder corporativo hace lo que quiere pero con una legitimidad y legalidad, como si surgiese un multilateralismo privado que paraleliza al sistema público, entonces por omisión o acción el sistema internalizó este pensamiento en donde las empresas son parte de la solución y no del problema.”

CSO

⁹⁹ Interview, CSO's representative, February 5, 2021.

4. Peru

Peru is the top producer of gold in Latin America and the second largest copper, silver and zinc producer worldwide.¹⁰⁰ It had a population of 31,562 million people in 2018, with 50.4% women (15.9 millions) and 49.6% men (15.6 millions).¹⁰¹ According to the World Bank overview, Peru's economy has experienced two distinct phases between 2002 and 2019. The first one showed a strong growth in employment and income which reduced poverty rates by 26% by 2013. The second phase, a slower one, was hit by decreasing commodity trading prices which reduced private investments, fiscal incomes and consumption.¹⁰² According to this institution, Peru's key sectors are agriculture, the extractive industry and tourism, therefore the dependence on natural resources is high.¹⁰³

In 2015, **mining** production was equal to 15% of the country's GDP.¹⁰⁴ In contrast, the public debt rose 26.3% due to a revenue shortfall in fiscal collection.¹⁰⁵ Because of its high production in copper, silver and zinc, Peru experienced several social and environmental conflicts linked to this activity. The last EITI report revealed 1,383 conflicts, with most (80%) linked to mining.¹⁰⁶ The main mining companies reporting in EITI are Compañía Minera Antamina S.A., Sociedad Minera Cerro Verde S.A., Minera Barrick Misquichilca S.A., Minera Yanacocha S.R.L.¹⁰⁷

In the **oil and gas sector**, the last EITI report shows a production of 3.3 million cubic SM and 12.5 millions of cubic SM.¹⁰⁸ This report shows a growing trend in gas production and revenues in the last ten years, while oil production has been decreasing since 2013. According to S&P Global, state owned oil company Perupetro is expecting new legal reforms to open new rounds of bids, especially in the northern jungle, as a long term strategy to boost the sector.¹⁰⁹ Peru joined the Extractive Industries Transparency Initiative (EITI) in 2007, publishing six reports.¹¹⁰

Regarding the use of SC concept in mass **media**, it is not very common as we see in the Media Cloud search tool. There are less than a thousand mentions in the last 7 years. This changed in 2017 when the Odebrecht scandal came to light. Because of the Odebrecht regional **scandal**, former Peruvian presidents Fujimori, Toledo, Humala, Garcia and Kuczynski are under investigation and prosecution for corruption, money laundering, bribery and revolving door activities. In this case, a common practice is the Public-Private Associations scheme of public business (PPA's), in which several mayors, governors and candidates have all come under investigation because of the flow of public money and resources towards private sector profits.¹¹¹ Former president, Alan García committed suicide as he was being arrested after been accused of granting the Line 1 of Lima Metro contract and receiving a bribe of US 4 million.¹¹² To this list we can also add former president's daughter Keiko Fujimori's receipt of undeclared donations for her presidential campaign in 2011.¹¹³

¹⁰⁰ Extractive Industries Transparency Initiative, «Peru», Extractive Industries Transparency Initiative, 2 de abril de 2021, <https://eiti.org/peru>.

¹⁰¹ Instituto Nacional de Estadística e Informática de Perú, «Perú. Brechas de Género 2019», diciembre de 2019, 45, https://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1716/Libro.pdf.

¹⁰² World Bank, «Peru Overview», Text/HTML, World Bank, octubre de 2020, <https://www.worldbank.org/en/country/peru/overview>.

¹⁰³ World Bank Group, «Peru. Systematic Country Diagnostic», febrero de 2017, 24, <http://documents1.worldbank.org/curateden/919181490109288624/pdf/Peru-SCD-final-3-16-17-03162017.pdf>.

¹⁰⁴ World Bank Group, 79.

¹⁰⁵ World Bank Group, 83.

¹⁰⁶ Extractive Industries Transparency Initiative, «Peru».

¹⁰⁷ Extractive Industries Transparency Initiative.

¹⁰⁸ Extractive Industries Transparency Initiative.

¹⁰⁹ S&P Global, «Commodities 2021: Peru Oil and Gas Industry Eyes Rebound | S&P Global Platts», 5 de enero de 2021, <https://www.spglobal.com/platts/en/market-insights/latest-news/oil/010521-commodities-2021-peru-oil-and-gas-industry-eyes-rebound>.

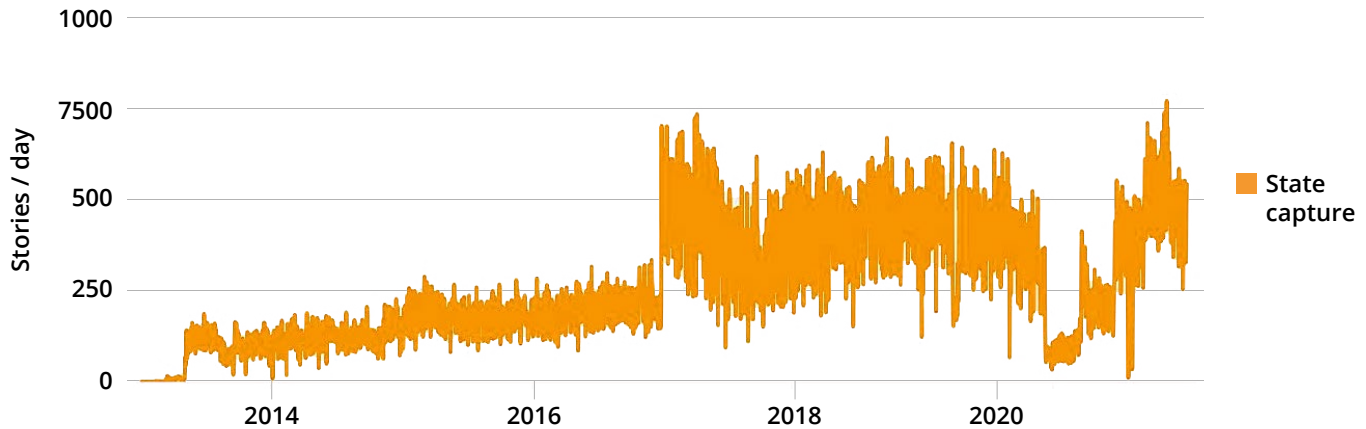
¹¹⁰ Extractive Industries Transparency Initiative, «Peru».

¹¹¹ Merino, Roger, «¿El poder de la Ley o la Ley del Poder? Gobernanza y legalidad tecnocrática en el Perú neoliberal: el caso de las APPs», s. f., 5-7.

¹¹² Deutsche Welle, «Lava Jato en Perú: tres años de terremoto político | DW | 21.12.2019», DW.COM, accedido 2 de marzo de 2021, <https://www.dw.com/es/lava-jato-en-per%C3%BA-tres-a%C3%B1os-de-terremoto-pol%C3%ADtico/a-51768980>.

¹¹³ Welle.

Graphic 8. Media Cloud SC in Peru



Nevertheless, mass media channels framed Odebrecht case as corruption. That was the same scope in the cases of “Los cuellos blancos del Puerto” case in 2019.¹¹⁴ In this context, the media give a poor definition of the concept due to low demand of this kind of information.

According with a expert on SC, “there are different ways of conceptualizing the privileged and advantageous relationship that certain strong actors can establish with the state, on public policies and resources, with great advantage over other groups or social actors; it can be cooptation, domination. However, the concept of SC is more generalized and more developed by initiative of the NGOs rather than academics”.¹¹⁵

The instrumental powers in Peru are the historical elites. **During the interviews, the informants recognized a process of shaping and reproduction of elites. According to the experts, “they already have a “class” connection that allows them to open doors and gain access and influence**, and that happens a lot in regulatory bodies, in ministries of economy and finance, they all belong to the elite and in some cases this elites open up and incorporate new people... this is very strong and marked in Latin America by its colonial origins”.¹¹⁶

In Peru, CSO’s and academics identify two fields of SC: political and economic. Who capture states? a) Economic power groups: those are represented by elites, big families or oligarchies; b) Multinational corporations; c) Organized crime.

In addition, in Peru, economic elites exert its influence through associations of national chambers, like Sociedad Nacional de Minería, Petróleo y Energía (SNMPE), the Sociedad Nacional de Petróleo and the emblematic Confederación Nacional de Instituciones Empresariales de Perú (CONFIEP). The corporate networking analysis conducted by Cárdenas points out that cohesion within principal holdings in Peru is regular. This study found that 30% of these holdings do not have any kind of connection either in stake-holding nor managing positions.¹¹⁷

¹¹⁴ NOTICIAS GESTIÓN, «Los Cuellos Blancos del Puerto: Hay más de 300 jueces y fiscales investigados por corrupción | CNM Audios nndc | PERU», Gestión (NOTICIAS GESTIÓN, 3 de mayo de 2020), <https://gestion.pe/peru/politica/los-cuellos-blancos-del-puerto-hay-mas-de-300-jueces-y-fiscales-investigados-por-corrupcion-cnm-audios-nndc-noticia/>.

¹¹⁵ Interview, February 9, 2021.

¹¹⁶ Ibidem.

¹¹⁷ Cárdenas, «Enredando a las elites empresariales en América Latina», 23.

The interviewees mentioned licit and illicit practices exerted by elites in order to influence state powers, such as revolving door, lobbying, informal networking channels and mass media promotion as well as bribery and political campaign financing, as the main **SC mechanisms**.

The WB analysis of the **legal framework** points to a highly decentralized system of regulation and implementation of industrial projects¹¹⁸ focused more on Municipalities as a key barrier to capture. Nevertheless, there are a lack of regulatory instruments to guide extractive industries through social conflicts and local community concerns.¹¹⁹

“ Sometimes, social elites don’t have to bribe or lobby because they already have a ‘class connection’ which unlocks all doors in order to enable them to influence the State.”

“ Las élites sociales a veces sin necesidad de soborno o lobby ya tienen una conexión de "clase" que permite abrir las puertas y lograr acceso e influencia sobre el Estado.”

Academic

¹¹⁸ World Bank Group, «Peru. Systematic Country Diagnostic», 138.

¹¹⁹ World Bank Group, 24.

Confederation of Private Entrepreneurial Institutions (CONFIEP)

The CONFIEP was formed in 1984 in the context of an economic crisis in Peru and “emergency” policies to avoid bankruptcy and opening up the country to stimulate trade.

CONFIEP’s demands were guided by legal framework instability and its intention to become a valid interlocutor representing collective business interests. It took some years for CONFIEP to gain full access to making-decision rooms. By this time, Francisco Durand identified: “Business unity was more the unity among leaders of member trade associations rather than a solid class unity”.

A good example of this, was the case of the Law DS 362 on business taxing in 1985. This law was issued in agreement with larger national firms despite CONFIEP’s institutional pressure to modify it.

In 1987, after banking nationalization reforms were announced by President Alan García, the CONFIEP achieved institutional unity along with the big economic groups against the nationalization of banks, embarking on a legal strategy and a process of political consolidation. In 1990, President Fujimori sought CONFIEP’s support.

In 2016, CONFIEP included 22 economic groups and its interest in national politics was explicit when its president, Martín Pérez stated: “It is normal for corporations to support two or three candidates political campaigns”. During former President Humala’s administration, Durand registered a clear example of the SC cycle within mining sector around the 30230 Law. This legislative process took 3 weeks to design and pass an ad-hoc Mining Law. It was a process in which “revolving door”, lobbying and excessive influence from private sector over structural powers in this country were evident.



Sources:

Durand, Francisco <<Cuando el Poder Extractivo Captura el Estado>>. Oxfam International, junio de 2016.
—. <<The Political Formation and Consolidation of Peak Business Associations: The Case of Peru>>, enero de 1992, https://kellogg.nd.edu/sites/default/files/old_files/documents/170.pdf.

Global economies are highly dependent on foreign investment. In LAC countries tax collection systems tend to be more flexible. Therefore, taxes collection system are susceptible to business conditions to the detriment of human rights. Some of the respondents in Peru mentioned the 30230 Act on tax measures, procedure simplification and permits to promotion and fostering of investment as an example of legislative actions that make flexible environmental and social standards, privileging private corporate interests, such as mining.¹²⁰ One of the experts told us that the logic of corporations is to increase their profits by reducing taxes through multiple mechanisms, the corporate contribution to income tax is low in many countries and that forces the state to collect more taxes. In that sense, it makes the tax system more regressive.¹²¹

a) Civic space

The civic space in Peru, regarding the extractive sectors, seems to be limited. Participation mechanisms of civil society organizations are not effective, as well as the consultation mechanisms of indigenous communities. There is a lack of transparency in the extractive companies processes, which has generated social conflicts that are not adequately addressed. On the contrary, the CSO's agreed there is a strong criminalizing narrative of the role played by human rights defenders, activists and indigenous communities nourished by corporate influenced over press media. A CSO's representative said there is a deliberate purpose aimed at delegitimizing anyone who criticizes the current model of economic development.¹²²

b) Gender perspective

There is a general consensus in Peru that women do not have equal participation in several aspects of public life. Some people from the public sector indicated that they have seen an important change in the attitude and role of women in the extractive sector, mainly in the mining sector, despite being a space that has historically been dominated by men. The changes have occurred slowly, but that responds to the fact that it is not easy for women. But there has been a small change in the role that women play in leadership spaces. On the other hand, decision-making positions within companies and the public sector, although it has a greater presence of women, continue to be primarily men.

¹²⁰ Act 30230, «Ley que establece medidas tributarias, simplificación de procedimientos y permisos para la promoción y dinamización de la inversión en el país», <https://sinia.minam.gob.pe/modsinia/admDocumento.php?accion=bajar&docadjunto=4389>.

¹²¹ Interview, February 9, 2021.

¹²² Interview, CSO's representative, 20 January, 2021.

5. Colombia

“To Speak of SC is difficult. There is not a single sector capturing the State but more of a symbiosis between elites, private sector and government, because they know they need each other to exist.”

“Hablar de CdE es difícil, porque no es que un sector capture a otro sino que es una simbiosis entre la élite, sector privado y gobierno, porque saben que se necesitan unos a otros para poder existir.”

CSO

In 2018, the Statistics Ministry in Colombia counted 44.16 million inhabitants, 51.2% women and 48.8% men.¹²³ The World Bank overview on Colombia finds this country with the highest income inequality and labor market informality in Latin America.¹²⁴

In the **oil and gas sector**, the largest contributor to Colombia's GDP was the state-owned oil company Ecopetrol, with 15% of total revenues from the oil sector in 2018.¹²⁵ Besides Ecopetrol, there are eleven other companies reporting via EITI in 2019.¹²⁶ The **mining sector** is not central to GDP contributions. In 2017, mining revenues were less than 1.8% and exports rose to 21% over the total amount of commodities traded.¹²⁷ This amount increased to 4.9% in the 2019 EITI report.¹²⁸ Colombia joined the Extractive Industries Transparency Initiative (EITI) in 2014, publishing five EITI reports.¹²⁹

On the use of **SC concept on mass media**, there were almost four thousand mentions. In the last 4 years there are articles where the concept SC appears literally, and defined as *“when the particular interest disguises itself as public interest”*.¹³⁰ Related to this, the articles also agree with the investigations of the Attorney General's office regarding the payment of bribes between the Odebrecht firm and public servants. Particularly in that year, the ex vice Minister of Transport, Gabriel García Morales, was arrested for having received “bribes from Odebrecht to favor the Brazilian company in the award of the Ruta del Sol II contract”.¹³¹ Later, the ex congressman Otto Bula is also accused of receiving bribes from the Brazilian firm

¹²³ Departamento Administrativo Nacional de Estadística de Colombia, «¿Cuántos somos?», 2021, <https://www.dane.gov.co/index.php/estadisticas-por-tema/demografia-y-poblacion/censo-nacional-de-poblacion-y-vivienda-2018/cuantos-somos>.

¹²⁴ World Bank, «Colombia Overview», Text/HTML, World Bank, octubre de 2020, <https://www.worldbank.org/en/country/colombia/overview>.

¹²⁵ Extractive Industries Transparency Initiative, «Colombia», Extractive Industries Transparency Initiative, 2 de abril de 2021, <https://eiti.org/colombia>.

¹²⁶ Ministerio de Minas y Energía, «Informe EITI Colombia 2019», 2020, 25.

¹²⁷ World Bank Group, «Colombia Mining Sector Diagnostic», 15 de enero de 2019, 5, <http://pubdocs.worldbank.org/en/726871566230943596/pdf/Colombia-MSD-Descriptive-Report-January-15-2019-FINAL.pdf>.

¹²⁸ Ministerio de Minas y Energía, «Informe EITI Colombia 2019», 28.

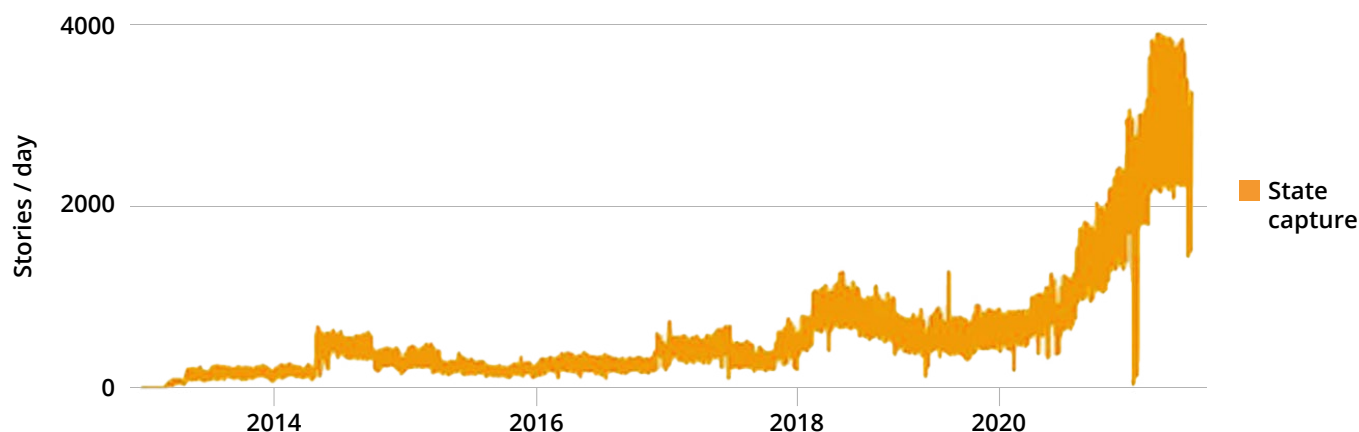
¹²⁹ Extractive Industries Transparency Initiative, «Colombia».

¹³⁰ de la Calle, José Miguel, «La captura del Estado», 23 de junio de 2017, <https://www.asuntoslegales.com.co/analisis/jose-miguel-de-la-calle-510741/la-captura-del-estado-2520420>.

¹³¹ Betín, Tomas, «Fiscal arremete contra la condena de solo 5 años a García Morales», EL HERALDO, accedido 2 de marzo de 2021, <https://www.elheraldo.co/colombia/fiscal-arremete-contra-la-condena-de-solo-5-anos-garcia-morales-435556>.

“to get it to keep one of the largest infrastructure works in Colombia”.¹³² Later, Roberto Prieto is arrested for “having known about the money contribution that Odebrecht [made] to the Company de Santos in 2010”.¹³³

Graphic 9. Media Cloud SC in Colombia



Corruption is again the recurrent theme when SC is mentioned in the country’s media, and in Colombia is no exception. The cases previously mentioned are framed as mechanisms of SC, and this is reflected in some headlines. “¹³⁴

Some of the interviewees agreed that **state capture occurs at different levels of government and in all powers**. Different means are used to capture the legislative branch, such as lobbying and traffic of influences. In the same way, it exerts pressure on the institutions of the federal order and the judiciary, including autonomous bodies.

Some of the interviewees did mention that the concept of SC could be useful to understand the phenomena. The SC term is common in Colombia for CSOs and academia, for instance. However, the lobbying exerted by businesspersons is described as cooptation. In the recent **scandals related to SC practices**, we found the Carlos Gutiérrez Robayo case. In 2014, This businessman who was related to Bogota’s mayor Gustavo Petro, benefited from public money to build the TransMilenio. The Panama Papers discovered a network of 15 offshore enterprises.¹³⁵ The last OECD Implementing Anti-bribery Convention Report on Colombia observes 25 ongoing investigations specially against Water Utility and Construction projects.¹³⁶

During the interviews, all the respondents agreed that the SC phenomenon in Colombia couldn’t be understood without understanding the internal armed conflict. According to Cardenas, elites in Colombia are fragmented and not coordinated enough to capture the state in one block.¹³⁷ On the other side, this country’s history refers to organi-

¹³² La otra Cara, «Otto Bula, el segundo pez gordo que cae por Odebrecht | La Otra Cara», <https://laotracara.co/> (blog), 15 de enero de 2017, <https://laotracara.co/actualidad/otto-bula-el-segundo-pezu-que-cae-por-odebrecht/>.

¹³³ Extractive Industries Transparency Initiative, «Colombia».

¹³⁴ FINANCIAL TIMES, «Odebrecht en Colombia: ¿Estado capturado?», 12 de agosto de 2018, <https://www.lanuevaprensa.com.co/component/k2/odebrecht-en-colombia-estado-capturado>.

¹³⁵ International Consortium of Investigative Journalists, «The Power Players».

¹³⁶ OECD, «Colombia Phase 3 Report on Implementing the OECD Anti-bribery convention.pdf», 12 de diciembre de 2019, 10-12, <https://www.oecd.org/corruption/Colombia-Phase-3-Report-ENG.pdf>.

¹³⁷ Cárdenas, «Enredando a las elites empresariales en América Latina», 40.

zed crime actors since the beginning of 90's decade, with Pablo Escobar's power within the structural spheres in Colombian state.¹³⁸ Several of our interviewees pointed out the **narco mafias and paramilitary forces against guerrillas, who have become regional actors implementing parallel states at a sub-national level**. This means that the control over territories is an historical logic which crosses with the areas of extractive industries, thus violence and natural resources control are inherent for a wide range of population.¹³⁹ An example offered by a person from civil society is Drummond: the victims' defenders of the company request that it be included within the mechanism of the special jurisdiction for peace, that is, that it be held accountable for its actions and crimes against humanity, since it was demonstrated that they hired paramilitary groups that acted as the company's private security. **SC refers also to outside/foreign agents that influence the state** in order to make public servants make decisions to benefit their (businesses' and firms') interests.

Some administrative modifications have allowed forms of capture at different levels of government and various sectors.

According to Garay, a decentralization process began in 1986 to reconfigure public administration, giving more power to municipalities for licensing, public services operations and tax revenue collecting.¹⁴⁰ This processes opened up serious gaps on authorities' regulation to observe the **law**. This situation opened the door for several actors to capture the state in the regions.

In the interviewing process, some opinions mentioned the "Ventanilla Minera" policy as a business ad-hoc legal instrument to easily grant licenses to mining industries. Some other interviewees said there were serious gaps in extractive industries licensing including environmental impacts assessments by the natural resources ministry and lack of access to due diligence in judiciary processes against environmental and human rights activists.

Interviewees pointed out revolving door, lobbying, political campaign financing, bribery, "cooptation of strategic positions", hiding of classified documents threatening of public servants, and mass media cooptation as the most common **SC mechanisms**.

A relevant issue regarding SC are public contracts to private companies by the state for the execution of public works. According to the informants from CSOs, the mechanisms for assigning contracts appear to be transparent, but in practice they are not fulfilled and end up benefiting influential companies. "They are companies founded or financed mainly by congressmen, mayors or governors who, when they assume public office, sell their shares to family members, with a clear conflict of interest".¹⁴¹

One example interviewees shared with the research team is the Cerrejón Mine in La Guajira, Colombia. This mine includes a coal extraction project, which is considered one of the largest open-pit mines in the world. It is currently controlled by the transnational companies BHP Billiton, Anglo American, and Xtrata. It is mainly the rural population, indigenous communities, and Afro-descendants who have been affected by this project in their social organization and their traditional livelihoods. In addition, human rights and environmental damages have resulted from an irregular process of land acquisition.¹⁴² the Cerrejón case demonstrates other expressions of SC. According to the interviewees, impunity could be

¹³⁸ Garay Salamanca, *La captura y reconfiguración cooptada del estado en Colombia*, 54.

¹³⁹ Garay Salamanca, *La captura y reconfiguración cooptada del estado en Colombia*.

¹⁴⁰ Garay Salamanca, 58.

¹⁴¹ Interview, CSO representative, February 3, 2021.

¹⁴² Minería, conflictos agrarios y ambientales en el sur de la Guajira, CINEP/Programa por la paz, 2016, http://biblioteca.clacso.edu.ar/Colombia/cinep/20160930114209/20160501.informe_especial_mineria.pdf

another form of SC in cases of human rights violations. In Cerrejón, there is a disproportional influence from corporations over the judicial branch and regulatory apparatus on environmental policies that makes them unable to respond to their power. **Relationship between authorities, mining companies, and the prosecutor is a type of capture aimed at reducing the risks of these companies in contexts of armed conflict, socio-environmental conflicts where the companies, through agreements, manage to generate very close relationships with armed forces and the prosecutor so that activists or members of communities in resistance are often persecuted.**¹⁴³

a) Civic space

There is a civic space in Colombia, however, it seems to be not effective at all. Some organizations mentioned that there are no laws that guarantee CSO's participation in the extractive sector, other than voluntary initiatives like EITI. What is needed in the context of Colombia are more spaces in which CSO, based organizations, communities and indigenous people actively participate. According to a CSO's representative, "dialogue is not participation, so our voice needs to be taken into account".

b) Gender perspective

Evidently, there are impacts on women that affect them in a different ways than men. The opinions on the role of women comes from a focus group the research team arranged with women from different countries, all from CSOs. During this FG, participants pointed out that women have to endure all the consequences related with the criminalization. When someone from the community is murdered or disappeared, women are the ones who bear all the weight derived from the searching.

Dispossession of the territory and violence have specific impacts on women's bodies. Land ownership is a key concept related to SC and women, because they have almost no access to own the land and to defense mechanisms. Another point of view revealed that sometimes women received compensations from companies and it could be misunderstood by the whole community as a support to businesses and at the end, women are criminalized and judged without taken into account their role as caretakers.¹⁴⁴ However for some of the FC participants, it is important to include women in high ranking positions in businesses or even in the stock Exchange, but it could be enough without class consciousness.

¹⁴³ Interview, CSO representative, 28 february 2021.

¹⁴⁴ Focus Group, February 5, 2021.

Annex C. Data Base of Interview responses.

Systematization Data Base is available at:

<https://share.mayfirst.org/s/xSBjTCJRTdaSy65>

The **Project on Organizing, Development, Education and Research (PODER)** is a regional, civil-society, non-profit organization. Our aim is to advocate for corporate transparency and accountability in Latin American countries from a human rights perspective, and empower civil society actors affected by corporate practices to serve as the main advocates of accountability in the long term.



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