



MELBOURNE FORUM
ON CONSTITUTION BUILDING
IN ASIA & THE PACIFIC

Sharing Insights
Exploring Challenges
Building Community



Constitution
Transformation
Network

STATE CAPTURE: HOW TO RECOGNIZE AND REACT TO IT

Constitutional INSIGHT No. 10

Cheryl Saunders and Katrina Malone

SUMMARY

State capture is one reason why representative democracy may fail to serve the needs and interests of the people. Constitutional INSIGHTS No. 10 sets out the indicators of state capture and identifies ways that constitutions, citizens and international actors can protect against state capture and address it when it occurs.

INTRODUCTION

Representation is a core feature of democratic systems of government. In a democracy, representatives are elected by the people on a regular basis, to govern on their behalf. Together, the people and elected institutions are critical links in the accountability chain for all other state institutions, including the courts, the civil service, independent constitutional bodies, and the police and security forces, each of which may also be representative in a descriptive sense.

These arrangements are designed to ensure that the state acts in the interests of its people—in other words, in the public interest. They are based on the assumption that power will change hands from time to time by way of free and fair elections and that the people of the state not only benefit from public institutions but also have an opportunity to serve in them.

In practice, a representative democracy may not live up to these expectations. Even when elections continue to be held, one or more state institutions may

When institutions fail to function as intended, the consequences affect people's well-being, erode trust in the system of government, and weaken the state's cohesion and stability.

operate in a way that does not adequately serve the public interest. It is not always easy to establish that this is happening. The needs and expectations of people differ, and there is often room for disagreement over what the public interest requires. The tipping point also may vary between contexts. In extreme cases, however, the problem will be obvious.

There are many possible reasons why public institutions may not function as they should. Political, economic, cultural, geopolitical and other factors, alone or in combination, may all play a role in undermining effective and accountable democratic government. When institutions fail to function as intended, the consequences affect people's well-being, erode trust in the system of government, and weaken the state's cohesion and stability. Addressing such failures requires remedial action that responds to the root causes of the problem.

In some cases, the problem lies in state capture, which was suggested as a possible explanation for why democracies fail to serve the needs and interests of their citizens during deliberations at the 2022 Melbourne Forum: 'Representation: Views from the Ground Up'. This Constitutional Insight draws on these discussions, which examined the experiences of diverse polities across the Asia-Pacific region.

This Constitutional Insight addresses five key questions:

1. What is state capture?
2. What are the indicators of state capture?
3. Can constitutions be designed to protect against state capture?
4. What can citizens do in the face of state capture?
5. Is there a role for international action?

1. WHAT IS STATE CAPTURE?

While the practices of state capture have a long history, the term was coined in the 1990s to explain the damage caused by certain practices that undermined new democracies in Eastern Europe after the dissolution of the Soviet Union. In that context, state capture was used to describe the way in which powerful self-interested private actors were able to accumulate wealth by purchasing regulatory advantages through illicit payments to public officials exercising state authority ([Kaufmann 2024](#)). Since then, there has been a growing awareness of the prevalence of state capture and the variety of ways in which it may be manifested. In a more recent analysis in South Africa in 2022, state capture was found to involve a conspiracy by collaborators inside and outside state institutions both to redirect public resources to serve their own interests

and to gain control of the political order to secure future power (Pillay 2022). State institutions are captured not only because they are induced to abuse their power but also because they are effectively repurposed to serve the interests of collaborators on a continuing basis (Bhorat et al. 2017: 4).

The variety of contexts in which the term has been used has resulted in different understandings of state capture. A useful formulation that reflects the core characteristics of the phenomenon, and so helps to distinguish it from other problems, is as follows:

State capture occurs where one or more individuals or groups (the ‘captors’) exert a level of influence or control over state institutions (the ‘captured’), so that the latter exercise public power to advance the private interests of the captors at the expense of the public interest.

The main components of the definition can be elaborated further.

1.1. The captors

While earlier formulations focused on capture by private individuals or groups, it is now recognized that captors may be within or outside state institutions—or both inside and outside at the same time—and are not necessarily limited to actors within the country in question. Common examples of captors from within the country include members of the political or economic elite, corporations, family dynasties, drug cartels and religious groups, where their actions seek to advance their own interests at the expense of the public interest. Captors from outside the country may include other governments, multinational corporations and transnational criminal organizations. There may also be multiple captor groups, which may or may not be operating in tandem with one another. In Pakistan, for instance, it has been suggested that a range of elite groups have been successful in using their positions for their mutual benefit, ‘including the feudal elite, large-scale traders, high-net-worth individuals, businesspersons and the military establishment’ (Pasha 2020: 21–23).

1.2. The captured

The captured may comprise any significant state institutions over which captors have come to exert control or influence. Examples include the presidency, the legislature—or a significant part of it—the courts or individual judges, public sector agencies dealing with sensitive issues (typically natural resources and energy) and independent oversight agencies such as electoral management bodies. The level of control or influence over a particular state institution may vary. An institution may be captured completely or in part. In the latter case, only some individuals within the institution may be involved in serving the interests of the captor group.

1.3. Methods of influence or control

Methods of influence or control vary, depending, in part, on whether the captors are situated within or outside government—or both inside and outside simultaneously. Methods used range from actions that are ostensibly within

State capture occurs where one or more individuals or groups (the ‘captors’) exert a level of influence or control over state institutions (the ‘captured’), so that the latter exercise public power to advance the private interests of the captors at the expense of the public interest.

Actions involved in state capture are often subtle and difficult to detect.

the bounds of law to those that are obviously unlawful and others that fall somewhere in between. They are directed not only at the exercise of power in the interests of the captors but also at the rules and institutions that frame the exercise of power, creating a sense of normalcy. Actions involved in state capture are often subtle and difficult to detect. For example, captors outside government may provide substantial electoral support for key candidates in the expectation of particular policy outcomes or favours. Captors inside the public sector may leverage their authority to influence state institutions to advance their private interests or to secure regulatory changes that bolster their own powers or those of their allies. Captors may exert influence or control by offering bribes and other illicit payments to public officials, promising jobs or other forms of advancement to public officials once their period of public service ends, and offering favours to family or friends of public decision makers, including through public procurement processes. These methods of control or influence may occur in established as well as younger democracies. An Australian study shows how a combination of tactics ranging from the use of money in politics to lobbying and personnel exchange has enabled the internationalized fossil fuel and arms industries to wield significant influence in the Australian political process, to serve their own interests ([Australian Democracy Network 2022](#)).

The immediate consequence is to damage the public interest and to advance the private interests of the captors, whoever they may be, affecting public policy, practices, expenditure and behaviour.

1.4. Consequences and scale of state capture

State capture occurs where public power is used to advance the private interests of the captors at the expense of the public interest. The immediate consequence is to damage the public interest and to advance the private interests of the captors, whoever they may be, affecting public policy, practices, expenditure and behaviour. The greater the scale of state capture, the greater its effects. Even relatively small-scale capture may intensify over time, acting as the thin end of the wedge. Inevitably, state capture may have wider ramifications as well, in ways that depend on the form that it takes. For instance, state capture may erode public trust in the courts as impartial arbiters of disputes or the effectiveness of integrity institutions as mechanisms for enhancing accountability and transparency. It may deter citizens from seeking public office or, conversely, encourage them to think of public office as an opportunity for self-enrichment. It may have effects on the cohesion of the state community: in Fiji, for example, elite capture of climate adaption projects has been said to have 'exacerbated existing inequalities in social hierarchies' ([Constitution Transformation Network and International IDEA 2023: 106](#)). In these and other ways, state capture undermines the operation and expectations of democratic representation.

2. WHAT ARE THE INDICATORS OF STATE CAPTURE?

It is not always easy to determine definitively that state capture has occurred or is occurring. Those engaged in state capture, whether as captors or captives, are unlikely to acknowledge illegitimate motives. Rather, if challenged, they are likely to claim that their actions are justified on legitimate grounds.

Actions that give rise to suspicion of state capture often can be hard to distinguish from robust partisan politics, competitive economic entrepreneurial activity, cultural practices around reciprocity and gift giving, and hegemonic behaviour that is familiar in international relations.

Nonetheless, there are typical indicators that state capture may be occurring that can be used to prompt an investigation and any necessary corrective action. Whatever justifications are offered, these indicators tend to suggest that something is amiss, operating as an early-warning system. Most forms of state capture occur incrementally. It is preferable to deal with them at an early stage, before they become established and even more difficult to correct.

Common indicators of state capture include the following:

1. *State action that is contrary to the public interest.* Such actions take place where state institutions (or individuals within those institutions) are carrying out their functions or exercising public power in a manner that appears to go against the public interest and that favours the private interests of a particular individual or group. In Indonesia, for instance, a regulatory scheme requires the coal industry to supply a certain percentage of coal for domestic use at a set price (a domestic market obligation, or DMO), to ensure sufficient access to electricity within the state. State capture by the coal industry has been cited as a possible reason why the public institutions responsible for imposing sanctions for non-compliance with the DMO set the sanctions at a level that effectively facilitates non-compliance (Prihandono and Widiati 2023: 222).
2. *Nepotism.* Nepotism occurs where one or more elite groups, family dynasties or their allies hold key positions within one or more state institutions that can be used to further their own interests. In the Philippines, for instance, governments at all levels are said to be 'dominated by the political elite, oligarchs and dynasties' (Constitution Transformation Network and International IDEA 2023: 74). Similarly, in Sri Lanka, the 2022 crisis in representative government has been linked to state capture by the Rajapaksa family and its allies (Constitution Transformation Network and International IDEA 2023: 70). Following the 2019 elections in Sri Lanka, members of the Rajapaksa family served as president, prime minister and members of parliament. Family members and allies also were appointed to other ministries and key positions within the civil service and state-owned enterprises (David-Barrett 2021).
3. *Close state relations with business.* Strong links between a particular state institution and powerful private actors may be an indicator of state capture—for example, where a public sector institution regularly makes decisions that benefit a business without adequate corresponding public benefit (Zúñiga 2019). Such links may take a variety of forms: individuals within state institutions may have a private stake in a particular business or industry or there may be a 'revolving door' for individuals between state institutions and the private sector as individuals who retire from

Nepotism occurs where one or more elite groups, family dynasties or their allies hold key positions within one or more state institutions that can be used to further their own interests.

An institution sometimes gains control of the mechanisms for constitutional change with a view to enhancing its own power.

Where foreign, transnational or international actors have a significant interest in securing particular policy outcomes within a country, they may attempt to gain influence or control over local institutions to further their own interests.

Constitutions can offer defences against state capture, depending on their design and the ways in which they work in practice.

government are appointed to key positions of influence within the private sector. This latter practice was common in the South Korean shipping industry, and some observers have claimed that it was one reason for the regulatory failures that led to the Sewol ferry accident in April 2014 ([You and Park 2017: 108–09](#)).

4. *Commandeering the mechanisms for constitutional change.* An institution sometimes gains control of the mechanisms for constitutional change with a view to enhancing its own power. In Sri Lanka, for instance, when ruling parties have enjoyed a parliamentary majority large enough to secure constitutional change, they have taken the opportunity to expand presidential power or to weaken fourth-pillar institutions ([Welikala forthcoming](#)). Myanmar's 2008 Constitution provides an example of a different kind. Under the Constitution, any proposal for constitutional change required the approval of over 75 per cent of the Union Parliament of Myanmar. Because the 2008 Constitution also required that the military hold 25 per cent of the seats in the Union Parliament, the military had an effective veto over any constitutional reforms ([Crouch forthcoming](#)).
5. *Unlawful or unprincipled public action.* An example of key institutions using their position in a way that is unlawful or unprincipled to protect their own power can be seen in Sri Lanka. When local government elections were due to take place in 2023, the government refused to release the funds needed to hold the elections. When the Supreme Court issued interim orders to facilitate holding the election the parliament threatened to use its privileges to conduct an inquiry concerning the judges. Ultimately, the court held that the failure to conduct the elections infringed several constitutional rights, but the incumbent president refused to accept this ruling ([Dias 2024](#)). The saga ended only when the presidency changed hands following the 2024 election.
6. *Manipulative foreign influence.* Where foreign, transnational or international actors have a significant interest in securing particular policy outcomes within a country, they may attempt to gain influence or control over local institutions to further their own interests. For instance, significant interference by transnational tobacco enterprises over policymaking in several countries in Asia appears to have resulted in weak tobacco control measures in those countries ([Reyes 2023](#)). Reports suggest that corrupt local officials in the Philippines may have issued fake birth certificates to foreign nationals, which in at least one case appears to have enabled a foreign national to run for public office ([Villeza 2024](#)).

3. CAN CONSTITUTIONS PROTECT AGAINST STATE CAPTURE?

Constitutions can offer defences against state capture, depending on their design and the ways in which they work in practice. Some of the more familiar mechanisms include traditional features, such as elections and separation of powers, which have other purposes but also hinder state capture through

checks and balances. Other mechanisms commonly found in constitutions or systems of public law may also play a role in averting state capture, including protections for freedom of speech and assembly, rights to access to information and administrative justice, and protections for whistleblowers. In constitutional design, the forms these mechanisms take must be adapted to the local context in order to work effectively to meet the needs of the people. The following constitutional mechanisms can help limit opportunities for state capture:

1. *Procedures for fair and regular elections, managed by independent electoral bodies.* All electoral systems are vulnerable to state capture through political donations and other forms of manipulation. The risks posed by money in politics may be mitigated through measures such as donation caps and transparency requirements concerning donations. The cost of electoral campaigns is also relevant. In some countries, including the Philippines, the cost of campaigning can discourage or prevent ordinary citizens from standing for public office, thus facilitating state capture ([Constitution Transformation Network and International IDEA 2023: 74](#)). Similarly, in Indonesia, where clientelism and nepotism within government are considered pressing issues, the 'high cost of campaign expenditures' is said to incentivize successful candidates 'to gain back the profit they have sacrificed' once elected ([Constitution Transformation Network and International IDEA 2023: 79](#)). The risk of other forms of electoral manipulation can be reduced by protecting the independence of electoral bodies that oversee elections, of office holders that can defend a smooth transfer of power after an election and of processes for dealing with electoral disputes. The use of a caretaker government during an election period is another mechanism for protecting the integrity of elections and their effectiveness in guarding against state capture: the use of a non-party caretaker system in Bangladesh from 2006 to 2011 is a particularly interesting example ([Banglapedia 2021](#)). Compulsory voting or diaspora voting also may be useful for inhibiting state capture in some cases but potentially counterproductive in others.
2. *Mechanisms to preserve the independence of offices and institutions that may check state capture.* Institutions capable of checking state capture include electoral commissions and anti-corruption commissions. Issues that require consideration in designing such institutions include the procedures for appointment, removal and funding, lines of accountability, the involvement of the opposition or others outside government in appointments and related processes, and the constitutional entrenchment of such arrangements. Vigilance is needed to protect these institutions themselves against capture.
3. *Mechanisms to protect the independence of courts and prosecuting authorities.* Courts and prosecutors must deal with claims relating to state capture that come before them and so are potential targets for capture themselves. Mechanisms to safeguard their independence include appointment and removal processes that do not depend on the executive

All electoral systems are vulnerable to state capture through political donations and other forms of manipulation.

Courts and prosecutors must deal with claims relating to state capture that come before them and so are potential targets for capture themselves.

branch alone, procedures that establish a high threshold for removal, and reasonable and secure arrangements for remuneration. In principle, the involvement of multiple branches of government in the representation appointment model used for most constitutional courts—for example, South Korea ([Chen 2018: 21](#))—inhibits state capture, although other mechanisms, including powers of reappointment, can put such courts at risk as well ([Tenggara Strategics 2024](#)). Courts also have other regular features that can play a role in defending against state capture as well, including the principle of open justice, the publication of reasons, and rules on judicial bias, conduct and ethics.

Public engagement in the deliberations of legislatures may also play a role in inhibiting state capture by enabling a wider range of views to be expressed and enhancing the accountability and transparency of the legislative process.

4. *Procedures that facilitate public participation and engagement in the work of legislatures.* Public engagement in the deliberations of legislatures may also play a role in inhibiting state capture by enabling a wider range of views to be expressed and enhancing the accountability and transparency of the legislative process ([Hendriks and Kay 2019](#)). In a well-functioning legislature, committees often involve the public in deliberations through calls for submissions and evidence and to counterbalance the voices of elites and others with significant resources. In some countries, legislatures are adopting other innovative ways to encourage and facilitate greater public engagement; the use of e-petitions in South Korea is an example. Similarly, some legislatures may allow civil society representatives to serve on parliamentary committees. In what may be an emerging trend, courts exercising judicial review are beginning to require more substantive compliance with legal requirements for public participation. As an example, in 2021 the Constitutional Court of Indonesia held that the country's Job Creation Law was 'conditionally unconstitutional', partly on the basis that the public did not have sufficient access to the law-making process, contrary to legal requirements ([Constitutional Court of the Republic of Indonesia 2021](#)).

Constitutional alteration procedures can be designed to protect the parts of a constitution that are most vulnerable to state capture.

5. *Constitutional alteration procedures to mitigate capture.* Constitutional alteration procedures can be designed to protect the parts of a constitution that are most vulnerable to state capture, including term limits and presidential powers. Protective measures might include eternity clauses, legislative supermajorities, referendum requirements and delays before finalizing proposals for constitutional amendments. Under Indonesia's 1945 Constitution, for example, presidential term limits can be altered only with the support of a supermajority of the People's Consultative Assembly and after a lengthy process. It seems that those alteration requirements were onerous enough to dissuade supporters of President Joko Widodo from attempting to extend his time in office through a constitutional amendment ([Mietzner and Honna 2023: 121–22](#)). In settling on amendment procedures, however, it is necessary to strike a balance between ensuring that amendments have broad support and leaving the constitution sufficiently flexible to respond to changing needs. Making the constitution too rigid can be another form of state capture, whereby those who originally framed the constitution retain control of its terms indefinitely. Fiji is an example, where the constitution put in place by the military government in 2013 is effectively impossible to amend.

6. *Transparency and oversight of transnational arrangements.* State captors can include actors from outside the country. These actors are more difficult to restrain constitutionally. One option is for countries to adopt transparent, accountable and inclusive processes for entering into transnational agreements that have significant implications for the public interest. The constitutions of some countries in the Asia-Pacific region offer examples that others might build upon. Some constitutions (e.g. Bangladesh, Indonesia, Nepal, Papua New Guinea, South Korea, Thailand, Vanuatu and Vietnam) expressly require legislative oversight of the treaty-making process. Less commonly, constitutions may require public consultation for certain kinds of treaties: for example, section 178(4) of Thailand's 2017 Constitution requires public consultation where a treaty has 'wide scale effects on the security of economy, society, or trade or investment of the country'. Many countries in the Asia-Pacific region also have procurement policies in place for government contracts that include transparency requirements (ADB and OECD 2007). How these policies work in practice when transnational actors are powerful and target relatively weak states is another matter. There is evidence, for example, that a significant percentage of public procurement funds continues to be wasted on corruption and bribery in the Asia-Pacific and elsewhere (Theodate 2021: 5).

A constitution is not a panacea for preventing or remedying state capture. It is particularly difficult to reverse state capture by relying solely on a constitution. In any event, no constitution is effective unless it is implemented in practice, which in turn is at least partly reliant on political will and the commitment of other institutions, including in the face of pressure. Without this commitment, even those institutions designed to preclude state capture are themselves vulnerable to capture. In addition, some forms of state capture are hard to prevent through constitutional design alone. The dominance of family dynasties in the Philippines offers an example (Yusingco 2022). The Constitution of the Philippines guarantees 'equal access to opportunities for public service' and takes steps to prohibit 'political dynasties', but a requirement for the dynasties to be 'defined by law' has never been given effect (article II, section 26).

The next section considers the role that the people might play in reacting against state capture to complement or compensate for a shortfall in constitutional design.

4. WHAT CAN THE PEOPLE DO IN THE FACE OF STATE CAPTURE?

The people in a democratic state are a critical link in the accountability chain. They also may be targeted by techniques associated with state capture, including manipulation of the media and strategic use of social media. Even so,

A constitution is not a panacea for preventing or remedying state capture.

The people in a democratic state are a critical link in the accountability chain.

More effective and responsive representation would have many advantages, including in providing another obstacle to state capture.

The role of the people in dealing with state capture can be enhanced through the actions of civil society.

When state institutions clearly fail to meet the expectations of the people, including for reasons attributable to state capture, popular uprisings may occur to try to force reform.

they can play a role in preventing and defeating state capture in at least three ways:

1. *Active citizenship.* At the time of elections, people can use their vote to reward candidates who are prepared to act in the public interest and to reject those who are complicit in state capture. Between elections, citizens are entitled to expect their representatives and state institutions more generally to operate in a manner that is responsive to their needs and expectations and to hold them to account when they fail to do so. There are many reasons why representation in these senses does not work as well as it might. One that applies in many countries is the emergence of 'transactional' representation—a form of vote buying—where candidates promise voters in their constituency tangible benefits if they are elected. More effective and responsive representation would have many advantages, including in providing another obstacle to state capture.
2. *Civil society.* The role of the people in dealing with state capture can be enhanced through the actions of civil society, by engaging with groups that, for one reason or another, are already motivated to monitor the actions of state institutions and well placed to identify and mount campaigns against risks of state capture. An example from the Philippines with a focus on electoral integrity is the National Citizens' Movement for Free Elections (NAMFREL), a non-partisan, volunteer-led organization dedicated to free and fair elections. NAMFREL played a critical role in the People Power Revolution in 1986 that resulted in the departure of President Ferdinand Marcos and the adoption of a new democratic constitution in 1987 (Goldman and Pascual 1988). Another example is the Citizens' Constitutional Forum (CCF), a non-governmental organization established after Fiji's first military coup, in May 1987. The CCF played an important role in consulting with a broad cross-section of the population on constitutional design ahead of the adoption of Fiji's 1997 Constitution (Cottrell and Ghai 2004: 18–19). In an example of another kind, Taiwan is one of several countries in the Asia-Pacific region where civil society contributes to a parliamentary monitoring organization. Taiwan's Citizen Congress Watch plays an important role in monitoring the performance of the legislature, including through the publication of evaluation reports which assess the performance of individual legislators on a regular basis (Chien and Kan 2024).
3. *Popular protest movements.* When state institutions clearly fail to meet the expectations of the people, including for reasons attributable to state capture, popular uprisings may occur to try to force reform. Whether such action results in meaningful change depends on many factors. Success would seem more likely when there are clear aims and a plan for democratic repair and where the people receive support, whether it be from civil society organizations, opposition political parties, state institutions that have not been captured or elements of the private sector that have been adversely affected by state capture (Bracking 2018). Examples in the Asia-Pacific region include the People Power Revolution

in the Philippines in 1986, which led to a new democratic constitution, and the Sunflower Student Movement in Taiwan in 2014, which demanded broader scrutiny of the Cross-Strait Service Trade Agreement with the People's Republic of China, in what has been described as a new form of 'civic constitutionalism' (Yeh 2017). The protests in Sri Lanka in 2022 illustrate both the possibilities and the challenges of citizen resistance to state capture. The scale of the protests caused the resignation of the cabinet, prime minister and president and led to the removal of the Rajapaksa family from government (Constitution Transformation Network and International IDEA 2023: 69). The gains were significant but fragile, in the face of severe and destabilizing economic challenges and underlying systematic governance problems. In the year following the protests, the new government led by President Ranil Wickremesinghe opted to delay local elections to avoid public scrutiny, took steps to introduce new laws to restrict free expression and failed to implement anti-corruption measures that the protest movement had demanded (Rafique 2023). The Sri Lankan protests may have continued to bear fruit, however, with the election of President Anura Kumara Dissanayake in 2024, who acknowledged the collective efforts of the people and promised a 'new era of Renaissance' (Ians 2024).

5. CAN INTERNATIONAL ACTION BE HELPFUL?

International actors can also be captors of state institutions. Even if their actions are not intentional, international actors may inadvertently facilitate or assist captors—for instance, when international donors provide aid and assistance in pursuit of geopolitical priorities without adequately considering whether, in doing so, they are helping to entrench state capture (Bartlett 2021).

This section considers whether and how international action can also assist in combatting state capture. At its worst, state capture renders key institutions of the state unable to act in the public interest. In these circumstances, there may be useful roles that international actors can play. To be as effective as possible, international action must be adequately adapted to the context of the country in question. International action is likely to be a short-term, rather than long-term, proposition, however. Over the longer term, whatever is achieved through international action requires support and commitment from inside the target country to secure the gains that have been made and to build on them.

In one generalized form of possible assistance, international non-governmental organizations that focus on corruption or similar misconduct may play a role in exposing state capture and supporting in-country civil society organizations that remain active. Transparency International, for example, publishes an annual Corruption Perceptions Index, which may be helpful in some cases. Other institutions that might play a similar role include, for example, the World Justice Project, with its Rule of Law Index, as well as quality media with international reach. As with all such initiatives, mechanisms of this kind are limited by the sources of data available to the respective international

Even if their actions are not intentional, international actors may inadvertently facilitate or assist captors.

International non-governmental organizations that focus on corruption or similar misconduct may play a role in exposing state capture and supporting in-country civil society organizations.

**External intervention
may be designed
specifically to deal
with state capture
and should take
place in response to
an invitation from
state institutions.**

institution, the methodologies employed in analysing the data, conscious or unconscious institutional biases, and the shortcomings of generalization.

In another type of international assistance, external intervention may be designed specifically to deal with state capture and should take place in response to an invitation from state institutions. While not an example from the Asia-Pacific region, the International Commission against Impunity in Guatemala (CICIG) offers an example of how such a process might work. CICIG was established in 2006 by a treaty between the United Nations and Guatemala. Its role was to assist in investigating and disbanding illicit security forces and clandestine security organizations with ties to the state. CICIG has been described as ‘a novel setup ... an independent investigative body operating under Guatemalan law and reliant on the local justice system’ (WOLA 2019). During its 12-year mandate, CICIG ‘supported corruption probes that resulted in the indictment of Guatemala’s former president and vice president; the prosecution of dozens of prominent government officials ... the ouster of more than a dozen corrupt judges and thousands of police officers; and the detention of powerful drug traffickers’ (WOLA 2019; Pachico 2015). Inevitably, CICIG was vulnerable to local political attacks, and its mandate was brought to an end in 2019 by the president at the time, notwithstanding citizen protests and a ruling by the Constitutional Court stating that the president’s decision was unconstitutional.

In yet another category, international action that is intended for other purposes may also have a bearing on state capture. The role of the International Monetary Fund (IMF) in Sri Lanka offers an example, which also illustrates potential pitfalls. The IMF’s financial assistance to Sri Lanka was made conditional on the adoption of governance reforms, including transparency and anti-corruption initiatives (Dubrow 2024: 11). Civil society organizations, however, criticized the IMF’s diagnosis of the root causes of governance failures in Sri Lanka and called upon the IMF to consult with civil society in future exercises of this kind (Dubrow 2024: 11). The IMF’s reputation in relation to state capture more generally is also affected by long-standing criticism that it has supported undemocratic regimes and ignored the needs and demands of the people in captured states (Bond 2023).

REFERENCES AND FURTHER READING

- Asian Development Bank (ABD) and Organisation for Economic Co-operation and Development (OECD), *Curbing Corruption in Public Procurement in Asia and the Pacific: Progress and Challenges in 25 Countries* (Manila, Philippines: ABD/OECD Anti-Corruption Initiative for Asia and the Pacific, 2017), <<https://doi.org/10.1787/9789264041332-en>>
- Australian Democracy Network, ‘Confronting State Capture’, February 2022, <<https://australiandemocracy.org.au/statecapture>>, accessed 10 March 2025

- Banglapedia, the National Encyclopedia of Bangladesh, 'Caretaker Government', last updated 18 September 2021, <https://en.banglapedia.org/index.php/Caretaker_Government>, accessed 10 March 2025
- Bartlett, W., 'International assistance, donor interests, and state capture in the Western Balkans', *Journal of Contemporary European Studies*, 29/2 (2021), pp. 184–200, <<https://doi.org/10.1080/14782804.2020.1794801>>
- Bhorat, H., Buthelezi, M., Chipkin, I., Duma, S., Mondli, L., Peter, C., Qobo, M. and Swilling, M., Friedenstein, H., 'Betrayal of the Promise: How South Africa Is Being Stolen', Public Affairs Research Institute, May 2017, <<https://pari.org.za/wp-content/uploads/2017/05/Betrayal-of-the-Promise-25052017.pdf>>, accessed 10 March 2025
- Bond, P., 'The IMF and World Bank Talk Good Governance, But Walk with State-Capturers', *At Issue*, Bretton Woods Project, 4 October 2023, <<https://www.brettonwoodsproject.org/2023/10/the-imf-and-world-bank-talk-good-governance-but-walk-with-state-capturers/>>, accessed 10 March 2025
- Bracking, S., 'Corruption and state capture: What can citizens do?', *Daedalus*, 147/3 (2018), pp. 169–83, <https://doi.org/10.1162/daed_a_00509>
- Chen, A. H. Y., 'Constitutional courts in Asia: Western origins and Asian practice', University of Hong Kong Faculty of Law Research Paper No. 2019/088, 17 October 2018, <<https://doi.org/10.2139/ssrn.3471122>>
- Chien, H. and Kan, J., 'Can parliamentary monitoring organisations help reverse democratic decline in Taiwan and Asia more broadly?', *Melbourne Asia Review*, 19 (2024), <<https://doi.org/10.37839/MAR2652-550X19.14>>
- Constitution Transformation Network and International IDEA, *Representation: Views from the Ground Up*, Report of the Seventh Melbourne Forum on Constitution-Building in Asia and the Pacific, 7–9 November 2022 (Melbourne and Stockholm: Constitution Transformation Network and International IDEA, 2023), <https://law.unimelb.edu.au/__data/assets/pdf_file/0011/4716299/MF7-Report_Representation.pdf>, accessed 10 March 2025
- Constitutional Court of the Republic of Indonesia, 'Court: Conditionally unconstitutional, Job Creation Law must be revised in two years', 25 November 2021, <https://en.mkri.id/news/details/2021-11-25/Court:_Conditionally_Unconstitutional,_Job_Creation_Law_Must_Be_Revised_in_Two_Years>, accessed 10 March 2025
- Cottrell, J. and Ghai, Y., 'The Role of Constitution-Building Processes in Democratization: Case Study–Fiji', International IDEA, 2004, <https://constitutionnet.org/sites/default/files/cbp_fiji.pdf>, accessed 10 March 2025
- Crouch, M., 'Myanmar', in D. S. Law, H. Lau and A. Schwartz (eds), *The Oxford Handbook of Constitutional Law in Asia* (Oxford University Press, forthcoming), <<https://doi.org/10.1093/oxfordhb/9780198825463.013.17>>
- David-Barrett, E., 'Guest post: How one family is capturing the Sri Lankan state', The Global Anticorruption Blog, 29 July 2021, <<https://globalanticorruptionblog.com/2021/07/29/guest-post-how-one-family-is-capturing-the-sri-lankan-state/>>, accessed 10 March 2025
- , 'State capture and development: A conceptual framework', *Journal of International Relations and Development*, 26 (2023), pp. 224–44, <<https://doi.org/10.1057/s41268-023-00290-6>>

- Dias, S., 'Thinking outside the (ballot) box: On the Sri Lankan Supreme Court's Election Commission decision', *Verfassungsblog*, 6 October 2024, <<https://doi.org/10.59704/12c1e1bc8ee0dd22>>
- Dubrow, G., 'The Role of Civil Society in Monitoring IMF Agreements: From the Margins to the Mainstream', Westminster Foundation for Democracy, May 2024, <<https://www.wfd.org/what-we-do/resources/role-civil-society-monitoring-imf-agreements>>, accessed 10 March 2025
- Goldman, R. and Pascual, H., 'Spotlight for democracy', *World Affairs*, 150/4 (1988)
- Hendriks, C. M. and Kay, A., 'From "opening up" to democratic renewal: Deepening public engagement in legislative committees', *Government and Opposition*, 54/1 (2019), pp. 25–51, <<https://doi.org/10.1017/gov.2017.20>>
- Ians, 'Dissanayake vows to lead Sri Lanka into "new era of Renaissance"', *Assam Tribune*, 23 September 2024, <<https://assamtribune.com/international/dissanayake-vows-to-lead-sri-lanka-into-new-era-of-renaissance-1552340>>, accessed 10 March 2025
- Kaufmann, D., 'State capture matters: Considerations and empirics toward a worldwide measure', in S. Rose-Ackermann (ed.), *Public Sector Performance, Corruption and State Capture in a Globalized World* (London: Routledge, 2024), <<https://doi.org/10.4324/9781003416234-14>>
- Mietzner, M. and Honna, J., 'Elite opposition and popular rejection: The failure of presidential term limit evasion in Widodo's Indonesia', *South East Asia Research*, 31/2 (2023), pp. 115–31, <<https://doi.org/10.1080/0967828X.2023.2236542>>
- Pachico, E., 'Guatemala ex-VP arrested, president implicated in scandal', *InSight Crime*, 21 August 2015, <<https://insightcrime.org/news/analysis/guatemala-president-implicated-in-customs-fraud-scandal/>>, accessed 21 May 2025
- Pasha, H. A., *Pakistan National Human Development Report 2020: The Three Ps of Inequality – Power, People and Policy* (Islamabad, Pakistan: United Nations Development Programme, 2020), <<https://www.undp.org/sites/g/files/zskgke326/files/migration/pk/NHDR-Inequality-2020---Overview-Low-Res.pdf>>, accessed 20 May 2025
- Pillay, D., 'The Zondo Commission: A Bite-Sized Summary', Public Affairs Research Institute, September 2022, <<https://pari.org.za/wp-content/uploads/2022/09/PARI-Summary-The-Zondo-Commission-A-bite-sized-summary-v360.pdf>>, accessed 20 May 2025
- Prihandono, I. and Widiati, E. P., 'Regulatory capture in energy sector: Evidence from Indonesia', *The Theory and Practice of Legislation*, 11/3 (2023), pp. 207–31, <<https://doi.org/10.1080/20508840.2023.2248837>>
- Rafique, N., 'Beyond the protests: Sri Lanka's Aragalaya movement and the uncertain future', Freedom House, 26 October 2023, <<https://freedomhouse.org/article/beyond-protests-sri-lankas-aragalaya-movement-and-uncertain-future>>, accessed 10 March 2025
- Reyes, I. N., *ASEAN Tobacco Industry Interference Index 2023: Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control* (Bangkok: Southeast Asia Tobacco Control Alliance, 2023), <<https://globaltobaccoindex.org/upload/assets/hvnrnubawKzn1mcGBmT858HpMJSNSb9vetXMeHfrLiWS5NC8RS.pdf>>, accessed 10 March 2025

- Tenggara Strategics, 'Analysis: Law revision deemed putting leash on Constitutional Court', *The Jakarta Post*, 29 May 2024, <<https://www.thejakartapost.com/opinion/2024/05/29/analysis-law-revision-deemed-putting-leash-on-constitutional-court.html>>, accessed 10 March 2025
- Theodate, M., *Resource Guide: Building Transparent and Open Public Procurement Systems for Achieving the SDGs in ASEAN* (United Nations Development Programme, 2021), <<https://www.undp.org/publications/resource-guide-building-transparent-and-open-public-procurement-systems-achieving-sdgs-asean>>, accessed 10 March 2025
- Villeza, M. E., 'NBI finds 1,200 fake birth certificates in Davao del Sur', *The Philippine Star*, 16 July 2024, <<https://www.philstar.com/headlines/2024/07/16/2370500/nbi-finds-1200-fake-birth-certificates-davao-del-sur>>, accessed 10 March 2025
- Welikala, A., 'Sri Lanka', in D. S. Law, H. Lau and A. Schwartz (eds), *The Oxford Handbook of Constitutional Law in Asia* (Oxford University Press, forthcoming), <<https://doi.org/10.1093/oxfordhb/9780198825463.013.55>>
- WOLA, 'Fact sheet: The CICIG's legacy in fighting corruption in Guatemala', 27 August 2019, <<https://www.wola.org/analysis/cicigs-legacy-fighting-corruption-guatemala/>>, accessed 10 March 2025
- Yeh, J., 'Marching towards civic constitutionalism', in B. Jones (ed.), *Law and Politics of the Taiwan Sunflower and Hong Kong Umbrella Movements* (London: Routledge, 2017), <<https://doi.org/10.4324/9781315575063-4>>
- You, J. and Park, Y. M., 'The legacies of state corporatism in Korea: Regulatory capture in the Sewol ferry tragedy', *Journal of East Asian Studies*, 17/1 (2017), pp. 95–118, <<https://doi.org/10.1017/jea.2016.32>>
- Yusingco, M. H., 'Barangay assembly: A citizen-led reinvigoration of political discourse and civic engagement in the Philippines', *Constitutional Studies*, 8/1 (2022), <<https://archium.ateneo.edu/cgi/viewcontent.cgi?article=1266&context=asog-pubs>>, accessed 20 May 2025
- Zúñiga, N., 'State capture in Asia Pacific', Transparency International Anti-corruption Helpdesk Answer, 22 July 2019, <<https://knowledgehub.transparency.org/helpdesk/state-capture-in-asia-pacific>>, accessed 10 March 2025

ABOUT THE AUTHORS

This issue of Constitutional INSIGHTS was written by Cheryl Saunders and Katrina Malone. It draws on discussions that took place at the seventh Melbourne Forum on Constitution-Building in Asia and the Pacific, held in Melbourne, Australia, on 7–9 November 2022.

ABOUT THIS SERIES

The Melbourne Forum on Constitution-Building in Asia and the Pacific is a platform co-organized by the Constitution Transformation Network and International IDEA. It brings together scholars and practitioners of constitution-building from across the region to share their perspectives on critical issues as a contribution to global understanding of the field. This series captures insights from the Melbourne Forum in an accessible and practice-oriented format.

For more Constitutional INSIGHTS, and to learn more about the Melbourne Forum, visit the Constitution Transformation Network website:

<<https://law.unimelb.edu.au/constitutional-transformations#melbourne-forum>>.

ABOUT INTERNATIONAL IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with a mission to support sustainable democracy worldwide. <<https://www.idea.int>>

ABOUT THE CONSTITUTION TRANSFORMATION NETWORK

The Constitution Transformation Network within Melbourne Law School brings together researchers and practitioners to explore the phenomenon of constitutional transformation.

<<http://law.unimelb.edu.au/constitutional-transformations>>

© 2025 International Institute for Democracy and Electoral Assistance and the Constitution Transformation Network

International IDEA publications are independent of specific national or political interests. Views expressed in this publication do not necessarily represent the views of International IDEA, its Board or its Council members.



With the exception of any third-party images and photos, the electronic version of this publication is available under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 (CC BY-NC-SA 4.0) licence. You are free to copy, distribute and transmit the publication as well as to remix and adapt it, provided it is only for non-commercial purposes, that you appropriately attribute the publication, and that you distribute it under an identical licence. For more information visit the Creative Commons website: <<http://creativecommons.org/licenses/by-nc-sa/4.0>>.

Design and layout: International IDEA

DOI: <<https://doi.org/10.31752/idea.2025.23>>

ISBN: 978-91-7671-936-7 (PDF)



International IDEA
Strömsborg
SE-103 34 Stockholm
SWEDEN
+46 8 698 37 00
info@idea.int
www.idea.int