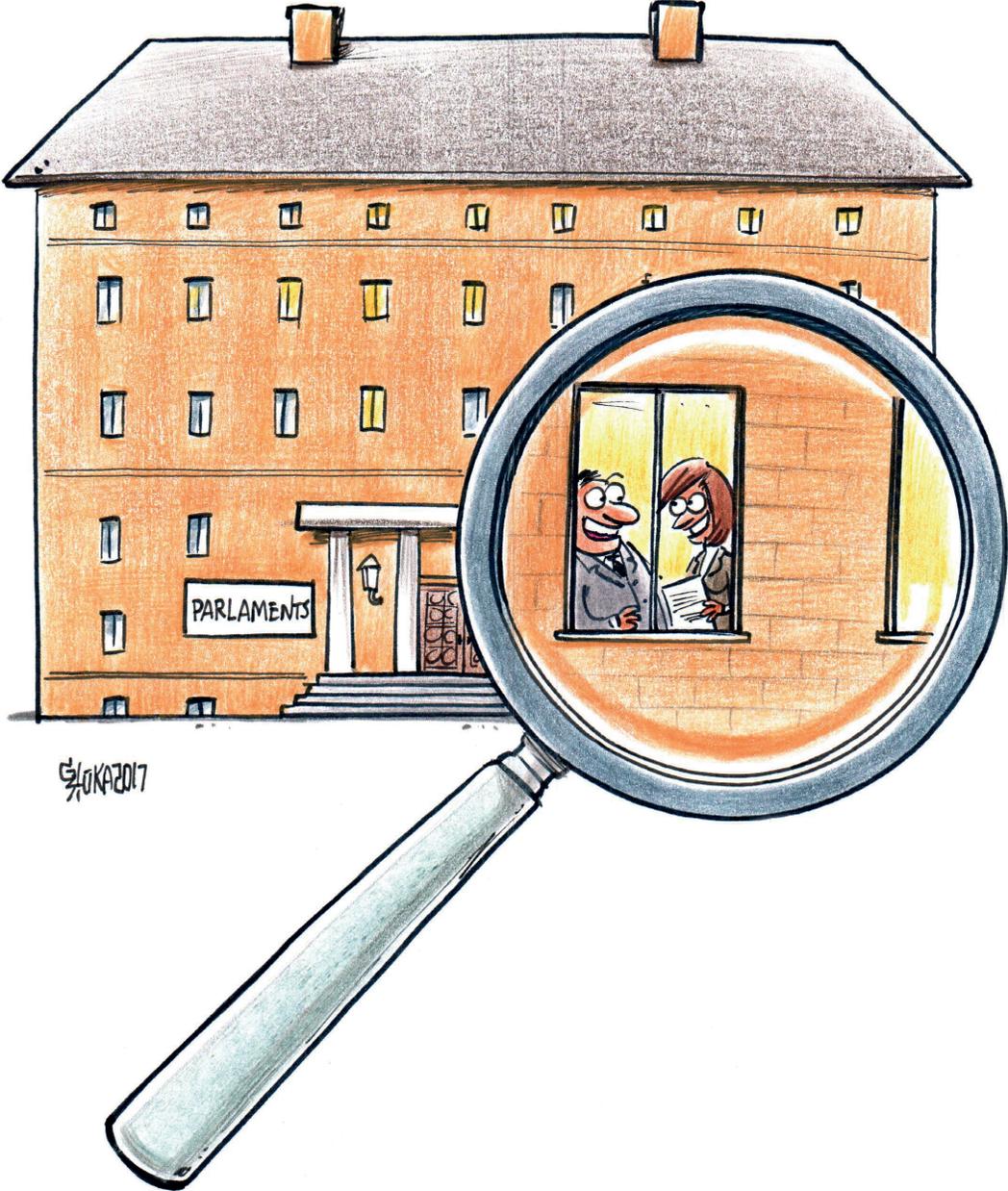


Monitoring State Capture in Parliament. A Handbook.





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Free download of the Handbook available via www.providus.lv and www.delna.lv



Society Integration
Foundation
Republic of Latvia

Monitoring State Capture in Parliament. A Handbook.

State capture is a form of corruption, where private sector actors illegitimately gain control over setting the «rules of the game» for society. This handbook provides advice for activists seeking to monitor signs of state capture in their parliament. The handbook is based on a monitoring exercise, conducted in Latvia from 2015 to 2017, on signs of state capture.



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1. About the Handbook



State capture

The concept of state capture developed at the end of the 20th/ beginning of the 21st century. The most important resources

1) Hellman, J., Kaufmann, D. «Confronting the Challenge of State Capture in Transition Countries», *Finance and Development*. Vol. 38, No. 3. 2001.

2) World Bank. «Anticorruption in Transition: A Contribution to the Policy Debate».

www.siteresources.worldbank.org/intwbigovantcor/resources/contribution.pdf

Political corruption

is a manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth

www.transparency.org/what-is-corruption/#define

This handbook is based on a monitoring exercise, conducted in Latvia from 2015 to 2017 by the Centre for Public Policy PROVIDUS and Transparency International - Latvia (DELNA) on signs of state capture in parliament. The handbook will be especially useful for non-governmental organizations, activists, foundations, representatives of parliament, journalists, anti-corruption experts and public officials in countries, where state capture is a part of the political landscape. The introduction to this handbook defines the concept of state capture and outlines the benefits of using monitoring as an accountability method. The second chapter describes the preconditions necessary for conducting a monitoring exercise similar to the one carried out in Latvia. The third chapter provides a deeper discussion of the monitoring methodology. The fourth chapter offers ideas for broadening and deepening the monitoring exercise, beyond the Latvian case. This chapter will be particularly useful and interesting for representatives of countries, where the Latvian model cannot be applied.

The author of this handbook is PROVIDUS senior analyst Iveta Kažoka. The editor is PROVIDUS senior analyst Valts Kalniņš. The monitoring methodology described in this handbook was developed by Valts Kalniņš and researcher Olafs Grigus.

1.1. What is state capture?

State capture in many countries is an often mentioned, yet seldom understood phenomenon, usually used to describe systemic political corruption. Metaphorically, state capture can be likened to a computer virus, which reprograms the functionality of the computer in the interests of the developer of the virus: when infected, the computer is partially or fully controlled by the developer of the virus; the computer is no longer under the

control of its legitimate owner. State capture also bears much similarity to an airplane hijacking, where the plane is controlled by hijackers and no longer is fulfilling its planned duties, as relied on by the passengers and owners of the plane. Like a computer or a plane, the state can also be hijacked and reprogrammed to operate in the interests of the hijacker.

Someone who has captured the state, the captor, can create rules of the game in a regulated economic sphere enabling self-enrichment, for example, by creating an ideal profit-making situation for his/her business, and creating regulatory obstacles for the competition. In cases where the captor feels threatened by law enforcement authorities, he/she can create legislation legalizing his/her actions, or create crippling conditions weakening law enforcement authorities to the point of inaction. It is also not very difficult to regulate away opportunities for public criticism, for example, by imposing restrictive regulations on the media, or civil society organizations.

This handbook, as well as the 2015 – 2017 monitoring of state capture in Latvia's parliament on which this handbook is based, defines state capture as a type of corruption, where control over the policy development process and the creation of the rules of the game for society has been taken over by private interests (enterprises or groups of elites), thus robbing society of democratic control. Society and its capacity to dictate its own rules of the game are the chief victims of state capture.

State capture can often be difficult to distinguish from legitimate lobbying, especially because state capture can be implemented by various methods, not limited to paying bribes to decision-makers. For example, in some countries entire political parties may be created in order to serve narrow business interests. In the monitoring exercise in Latvia, state capture was primarily identified as a situation where private sector actors impose their views by providing economic gain (bribes, partially or fully hidden party financing) to decision-makers.

Unfortunately civil society organizations or media are never present at the moment when the captor hands off a bribe, or makes an under the table political contribution, in order to ensure the passage of a particular piece of legislation in parliament. This does not, however, mean that society has no tools at its disposal to combat state capture. A number of indirect signs can point to the possibility of state capture, for example,

irregularities in the decision-making process, or active opposition to new anti-corruption initiatives. In a democratic society, civil society organizations have every right to draw public attention to these indirect signs.

1.2. Why monitor?

One of the ways in which civil society organizations can identify signs of state capture and/or risks of state capture, is to monitor state capture. In contrast to research or episodic case studies (for example, in a blog), a benefit of monitoring is its regularity. The general public is offered information on one topic at regular intervals. Monitoring, in contrast to research, can play a preventative role: decision-makers know that they are being regularly monitored, and can thus choose to avoid actions in the decision-making process, that give rise to suspicion of state capture. In comparison to individual case studies, monitoring is conducted based on a detailed methodology and systemic data collection and analysis. There is less of a risk that an important state capture episode would pass unnoticed, or that the significance of some event would be characterized inappropriately (exaggerated or downplayed).

There are, of course, weaknesses related to monitoring as a method. Monitoring does not allow for an instant reaction to issues, as they are noticed. Monitoring results are made public with a time delay, when the events described may already be old news. Monitoring also requires predictability in access to information (for example, access to audio recordings of parliamentary committee hearings), which may not always be under the control of the monitoring team, but dependent on the institution being monitored.

1.3. Basic information on the monitoring exercise in Latvia

The Latvian Parliament was subject to monitoring from November 2015 to May 2017, under the auspices of the project «Analyzing Signs of State Capture: A Case Study of Latvia.» The project was implemented by two civil society organizations, well known for their anti-corruption work: the Centre for Public Policy PROVIDUS and Transparency International – Latvia (DELNA). The project was supported by the Open Society Institute in cooperation with Open Society Foundations. One aim of the project was to create and test a methodology for monitoring state capture in the legislative process, and in the appointments procedures for public officials. In addition to monitoring signs

PROVIDUS mission is to promote evidence-based policy in areas important for Latvia's development: good governance, anti-corruption and migration. PROVIDUS work methods include policy research and analyses, advocacy, monitoring, organization of public events and discussions.

Transparency International Latvia (Sabiedrība par atklātību – Delna)

is the national chapter of the international anti-corruption organization Transparency International (www.transparency.org). It is the leading watchdog organization in Latvia with the main aim to contribute to the formation of an open, just and democratic society, free from corruption in private and public sectors and interpersonal relationships. Transparency International defines corruption as «the abuse of entrusted power for private gain».

of state capture in the parliament, the project included other elements, such as case studies on select topics.

Latvia has been a member state of the European Union since 2004. Comparatively, Latvia does not have a particularly high level of corruption. The Corruption Perceptions Index in 2016 awarded Latvia 57 points on a scale of 100, where 100 is the best possible situation. Latvia is the 44th cleanest (corruption-free) country in the world (out of 176 countries). The monitoring exercise for state capture also concluded that signs of state capture in the parliament of Latvia are not the norm, but rather an exception.

1. Table

Obligatory preconditions for monitoring state capture

1. Open parliamentary sessions and parliamentary committee hearings
2. A monitor, who can attend committee hearings and/or the existence of and access to audio recordings of the committee hearings
3. At least one member of the monitoring team who has a firm grasp of the legislative process and its day to day operations
4. Parliamentary debates and decision-making focus on policy substance
5. The parliament is not absolutely corrupt

2.1. Minimum (mandatory) preconditions

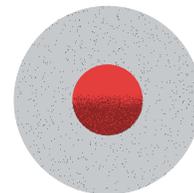
Open parliamentary sessions and parliamentary committee hearings

In order for monitors to be able to identify state capture signs, it is imperative that parliamentary discussions are not shrouded in secrecy, i.e. that plenary sessions and committee hearings are open to the public. This methodology described in this handbook will not be effective if parliamentary deliberations occur mostly in closed sessions, where the only public knowledge about a law is its text. In some parliaments closed committee meetings are the norm, thus this methodology has a limited application in those cases.



A monitor, who can attend committee hearings and/or the existence of and access to audio recordings of the committee hearings

Even if plenary sessions and committee hearings are open, this does not always mean that a monitor will be allowed to attend, or that these sessions are recorded in video or audio format. The methodology tested in Latvia will apply to those parliaments where at least one of these elements, ideally both, are present: monitors should have access to parliamentary committee hearings, and they should have the opportunity to review the proceedings in an audio or video format.



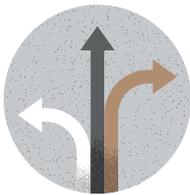
Ideally monitors should personally attend committee hearings and review video recordings of those hearings. Accessibility of a recording (video or audio) is important for precision; it also relieves the monitors from the requirement to attend 100% of

committee hearings, which can sometimes take place simultaneously. However, the monitor should seek to personally attend as many hearings as possible, because that allows observation of conversations before and after the official recordings, and of non-verbal communication and out-of-earshot communications (for example, politicians' communications with lobbyists present at the hearing, or suspicious agreement between ideologically opposed politicians, or those that normally do not form political alliances). An audio recording will in all likelihood not show biases on the part of the committee chairperson, such as giving the floor to some viewpoints, but not others. In those parliaments, where voting is not documented in the official minutes, a video recording may be the only way to ascertain the position of those members of parliament who have not publicly expressed their viewpoint.



At least one member of the monitoring team who has a firm grasp of the legislative process and its day to day operations

In designing a methodology for monitoring state capture, it is important to acknowledge that parliaments differ both in their formal procedural regulations, and in their decision-making traditions. The monitoring team should include at least one participant, who is able to discern what is a legislative process typical for the country, and what is a legislative process that diverges from the norm: for example, where regular procedures are rushed, or a new legislative initiative lacks briefing materials of the typical quality standard. It is possible that a legislative initiative can result in a new law in the span of a week, but if this is typical for the country, this should not raise any red flags. In other countries this may be an atypical situation, if the normal legislative initiative takes a year to become law, and in this case red flags would be raised.



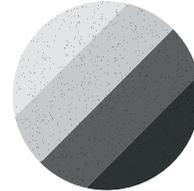
Parliamentary debates and decision-making focus on policy substance

This monitoring methodology assumes that parliamentarians are ready to publicly debate new legislation, and real, substantive decision-making occurs in parliament itself. If public debate among parliamentarians is not the norm (for example, parliamentary committees only formally rubber stamp decisions covertly made elsewhere), this monitoring methodology will not prove useful. Legislative monitoring, conducted by a single monitor, can uncover issues in the legislative process only if a parliamentarian publicly speaks of these issues during a committee hearing or plenary session. For a monitoring team to

be able to identify issues, about which parliamentarians themselves remain silent, a much larger monitoring effort is needed, including substantive expertise in many issue areas (see chapter 4 of this handbook).

The parliament is not absolutely corrupt

Similar caution must be exercised where parliaments have few if any non-corrupt members. In this case, it is doubtful that monitors would be able to identify problems in the legislative process based on public discussion. The more members of parliament are interested in corruption prevention and feel secure in discussing legislative issues which may not be in the interests of powerful politicians in their own parties, the easier it is for monitors to identify state capture signs based on public discussions in parliament.



2.2. Ideal preconditions for monitoring state capture

Ideal conditions for monitoring

1. Parliamentary and parliamentary committee documents are accessible, and sufficiently detailed
2. Voting in commission and in plenary sessions is a matter of public record
3. Political party programs are sufficiently detailed
4. Party sponsors and their main interests are a matter of public knowledge
5. Legislative initiatives are accompanied by explanatory documents
6. Legislation is evaluated for corruption risks
7. Parliamentary research services provide publicly available analysis
8. Parliamentary leadership and committee leadership is cooperative
9. Parliament itself evaluates if proposed legislation is in line with policy planning documents
10. All aspects of the legislative process are transparent and accessible – especially documentation on parliamentary working groups and meetings held with lobbyists

The Declaration on Parliamentary Openness

is a call to national parliaments, and sub-national and transnational legislative bodies, by civil society parliamentary monitoring for an increased commitment to openness and to citizen engagement in parliamentary work. The Declaration on Parliamentary Openness was officially launched at the World e-Parliament Conference in 2012. Since its launch, the Declaration on Parliamentary Openness has been formally endorsed by various international organisations and by a number of national and subnational legislatures.

www.openingparliament.org

While the previous section focuses on preconditions mandatory for monitoring to take place, this section examines preconditions desirable for this monitoring methodology to be fully effective. If such ideal preconditions existed in parliament, an observer would be able to ascertain if state capture exists.

Parliamentary and parliamentary committee documents are accessible, and sufficiently detailed

In addition to having access to audio or video recordings of parliamentary committee hearings, it would be desirable for the monitor to have access to other parliamentary documents. For example, minutes or transcripts of committee hearings can help in quickly ascertaining if any issues of interest to the monitor have been discussed. Such documents would also contain complete lists of attendees, including members of parliament and other attendees and the organizations that they represent. These types of details are usually not included in video or audio recordings. In order for minutes of the meeting to be useful for the monitor, it is important that they are sufficiently detailed (for example, by identifying all speakers), and that they are available in a timely fashion, a few days after the event. The work of the monitor is significantly easier, if all documentation is publicly accessible, especially texts of the draft legislation under consideration in the parliamentary committee hearing, as well as all submitted amendments and advocacy materials.

Voting in commission hearings and in plenary sessions is a matter of public record

Not all parliaments require a record of voting in committee hearings. For example, in Latvia, records include only the number of parliamentarians voting for, against or abstaining. It is a challenging task for the monitor to recognize and record the identity of each voting parliamentarian in the few seconds allotted to a show of hands; therefore, at committee level it is often impossible to identify who voted for or against a particular proposal. Making votes a matter of public record would help monitors identify suspicious departures from party programs, or ties with political party donations.

Political party programs are sufficiently detailed

In order to identify suspicious departures from party programs, it is necessary for these party programs to be sufficiently detailed. If a party has formulated only general operating principles, then it will rarely be possible to apply these principles to the work of a parliamentarian in any meaningful way. Draft

legislation, which raises red flags about state capture, usually pertains to particular economic policy areas (for example, the regulation of ports, the taxi business, licencing) and its analysis requires a high level of specific expertise. Vague party programs usually cannot be used as a guideline for policy decisions in these cases.

Party sponsors and their main interests are a matter of public knowledge

If political party donor lists are not publicly available and/or monitors do not have access to data bases with this information, including not only who donors are, but what economic sectors they represent, then it is difficult for the monitor to make connections between legislative initiatives and the interests of the party sponsors.

Legislative initiatives are accompanied by explanatory documents, legislation is evaluated for corruption risks, and parliamentary research services provide publicly available analysis

Signs of state capture would be more easily identified if parliament itself issued, or requested, detailed explanatory information on proposed legislative initiatives, and if these documents were publicly available. For example, some parliaments require a written argument (annotation) for each new legislative proposal, sometimes parliamentary committees commission analysis of legislation from either the parliamentary research service or an external research institute. In Lithuania, parliamentary committees can request an 'anti-corruption review', i.e. a report on those aspects of the legislative initiative which create a vulnerability to corruption.

Parliamentary leadership and committee leadership is cooperative

Finally, monitoring could be significantly improved if there is a good, cooperative relationship with the parliamentary leadership and parliamentary committee leaders. This would allow for quick resolution of access to information issues, and help improve the working atmosphere in parliament. The Declaration on Parliamentary Openness, supported by a number of international organizations, calls upon parliaments, in paragraph 7, to create preconditions for effective parliamentary monitoring: „Parliament shall recognize the right and duty of civil society, media and the general public to monitor parliament and parliamentarians. Parliament shall engage in

consultations with the general public and civil society organizations that monitor parliament to encourage effective monitoring and reduce barriers in accessing parliamentary information.»¹

Parliament itself evaluates if proposed legislation is in line with policy planning documents

In some countries a myriad of policy planning documents have been adopted (strategies, plans, concepts, etc.), but no one at the parliamentary level monitors if new legislative initiatives, especially those originating in parliament, are in line with these policy plans. Taking into account the limited resources available to civil society organizations, they rarely are able to identify misalignments. However, when strategic planning documents are ignored, it is much easier to engage in corruptive practices. Therefore, it is important that such oversight is done by parliament itself.

All aspects of the legislative process are transparent and accessible – especially documentation on parliamentary working groups and meetings held with lobbyists

Sometimes the most significant legislative compromises are negotiated not in parliamentary committees but in specially convened working groups or other formats. It is important that the parliamentary website provide access to a list of working groups, including their participants and meeting times, as well as to working group documents, as far as possible (for example, documents being prepared for the particular working group). In this same vein, members of parliament and other parliamentary officials participating in the legislative process (political party consultants, committee advisers and others) should keep a record of their meetings with lobbyists.

¹www.openingparliament.org/declaration/

3. Monitoring state capture – methodology



This section describes the methodology used from 2015 to 2017 in Latvia to monitor signs of state capture in parliament. When implementing such monitoring, three important elements need to be considered:

1. Designing the methodology.
2. Defining signs of state capture.
3. Communicating monitoring results.

3.1. Designing methodology



The three person monitoring team in Latvia included: a monitor (part-time), a project manager, who was also an expert on parliamentary process (part-time) and a communications expert (part-time). The project manager and communications expert also had other responsibilities in the project not related to the actual monitoring. The monitoring exercise was only one element in a project of broader scope analyzing state capture; other elements included a number of case studies and public discussions.

The parliament of Latvia was monitored from November 2015 to May 2017. The project team created a monitoring methodology, defining signs of state capture, and creating an initial selection of draft legislation to be monitored. After initial testing period, in July 2016, the project team expanded and adjusted the methodology.

Due to limited resources, the project team decided to monitor only two types of decision-making typical for parliament:

1. Draft legislation, including amendments generated by members of parliament
2. Parliamentary decisions on the appointment of public officials

The initial list of issues to be monitored included draft legislation that fit the criteria described in Table 3. The monitoring methodology assumed that, if the legislator was corrupt, then state capture would be visible in issues described by the criteria below. In other words, these are issues carrying a high corruption risk.

Risks

The probability of corruption permeating the decision-making process, and the potential for damage

Prior to launching the monitoring in November 2015, an initial list of legislative initiatives to be monitored was prepared. Potential initiatives for inclusion were evaluated against the criteria, by reading the texts, the explanatory notes, and if necessary, consulting other experts.

After the monitoring was underway, the list of initiatives to be monitored was expanded (approximately monthly). For example, if a new initiative or a legislative amendment, showing an indicator of state capture (see the following section) had been submitted to parliament. As a part of the monitoring exercise, members of parliament, social network users and others were

3. Table
Criteria for selection – high risk draft legislation

| Criteria | Commentary |
|--|--|
| 1. The initiative either creates or removes barriers to business (for example, selective tax breaks, new requirements for some business sectors, selective tax hikes). | In these cases one must check for any connections to party donors or hidden interest groups from the affected business sectors, who may wish to improve their conditions for business, or to place burdens on the competition. |
| 2. The initiative targets those industries, represented by the largest party donors. | This criterion is useful only if monitors have access to information about party donors and the industries that they represent. |
| 3. Initiatives, which delegate a public task to a private organization (business or civil society). | This presents a risk of clientelism. Clientelism is a situation, where a stronger entity («patron») offers a benefit to weaker entities («clients»), in exchange for a benefit, such as political support. |
| 4. Initiatives, which award public resources to particular private sector entities. | Risk of clientelism. |
| 5. A weakening of anti-corruption institutions, or resistance to strengthening these institutions. | In Latvia, the following institutions should be monitored: The Corruption Prevention and Combatting Bureau, the State Police, The State Revenue Service. |
| 6. Initiatives, which can jeopardize the neutrality of public institutions by changing the preconditions of selection and appointment of public officials. | Risk of «capture» of public institutions |
| 7. Initiatives, which can jeopardize the neutrality of public institutions by changing the scope of responsibility or the oversight mechanisms. | Risk of «capture» of public institutions |
| 8. Initiatives aiming to raise or lower the bar for transparency in public institutions (including initiatives specific to particular public bodies). | The more transparency, the easier it is to monitor any suspicious activities. |
| 9. Initiatives aiming to change political party regulations (including those changing party financing rules or decision-making parameters). | If the party itself is «captured», then it is doubtful that it will allow its own members of parliament to devote their energy to anti-corruption activities. |

invited to suggest other legislative initiatives that should be included in the monitoring.

The selection process of legislative initiatives to monitor quickly induced the monitors to evaluate the chances for state capture to have occurred, and to prioritize which committee hearings needed to be attended in person. It did not, however, lessen the total work load. The monitor needs to be prepared for the fact that signs of state capture can crop up in any draft legislation, in any parliamentary committee. Therefore, one must be careful not to let the list of selected legislative initiatives to be monitored create a false sense of security that all bases are covered.

Recommendations

Monitors should develop a routine in order to reduce the risk of missing important initiatives that raise questions – in addition to the pre-selected list of initiatives, the monitor should follow the daily news on parliamentary activities, Twitter accounts of members of parliament and parliamentary observers, and use other resources to stay abreast of events.

Monitors should seek to cultivate allies among the members of parliament or parliamentary staff, who can funnel information on initiatives or procedural changes that raise red flags.

In those countries, where draft legislation is publicly accessible through the internet, the monitor should read through all legislative initiatives under consideration during the monitoring period (including legislative drafts moving from first to second to third readings), focusing on the substance of the changes being proposed.

3.2. Signs of state capture

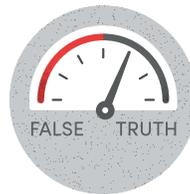
The monitoring team identified signs of state capture, dividing them into three categories:



Signs relating to the appointment of public officials



Signs relating to the legislative process



Signs relating to the substance of the legislation

Indicator

An event, expression or occurrence that points to the possibility of corruption in the decision-making process

4. Table
Signs of state capture in the appointment of public officials

| Criteria | Commentary |
|---|--|
| 1. A member of parliament votes opposite to his/her stated intent | This indicator can be monitored only if voting is transparent and recorded (for example, in Latvia's parliamentary committee hearings voting is transparent, but individual votes are not recorded) |
| 2. In cases where a professional selection process has been conducted prior to a parliamentary approval – a departure from the professional selection results, with inadequate justification | This situation gives cause to assume that the parliamentary decision is motivated by reasons hidden from society or by illegitimate reasons |
| 3. Voting in favor of a candidate who is blatantly less qualified for the position (especially in cases where there has been no public discussion about the merits of the less qualified candidate) | In order to effectively monitor this indicator, the monitor must closely follow media discussion of the candidates |
| 4. Exclusive or deep engagement of individuals in the consultation and selection process, who do not have a formal role in the selection process of public officials | In other words – the selection process of candidates for public office includes the engagement of individuals not suited to the task (such as political party «bosses», who are not themselves members of parliament, or questionable «experts») |
| 5. Candidates nominated at the last minute, with no public discussion, and appointed with a lack of justification | A reasonable observer would not be able to understand why a new candidate has been proposed at the last minute |
| 6. Candidates affiliated with political parties are appointed to positions, where there are expectations of political neutrality | <p>Party affiliation can be established using these criteria:</p> <ol style="list-style-type: none"> <li data-bbox="799 1170 1253 1226">1. The candidate has made donations to the party in the year prior to appointment <li data-bbox="799 1245 1253 1301">2. The candidate ran for parliament from the party list in the previous elections <li data-bbox="799 1320 1253 1414">3. The candidate has held a political office, and there exists other information creating a link to the party <li data-bbox="799 1433 1253 1528">4. the candidate is universally considered to be linked to this political party, and this is widely reported in the media |

A typical result of state capture is laws that are passed, reflecting the particular interests of the captor. The monitoring methodology used in Latvia divides signs of state capture into two categories – signs relating to process (Table 5) and signs relating to substance (Table 6).

5. Table
Signs of state capture in the consideration of legislative initiatives: process

| Criteria | Commentary |
|---|--|
| 1. A member of parliament votes opposite to his/her stated intent | This indicator can be monitored only if voting is transparent and recorded (for example, in Latvia's parliamentary committee hearings voting is transparent, but individual votes are not recorded). |
| 2. The individual submitting the initiative cannot or will not provide justification for the initiative, especially if the initiative has been submitted for the final reading of the law | This can be a sign that the true authors of the initiative are not known, and the member of parliament is simply operating as a messenger. In the Latvian monitoring exercise this indicator was quite prevalent |
| 3. The initiative is blatantly opposite to the party's stated position (if there is no indication of another reason, not associated with state capture, for a change of policy stance) | This indicator can be identified either in discussions between members of parliament themselves (one member pointing out the contradictions), or by examining the long-term planning documents themselves |
| 4. The initiative is blatantly opposite to positions taken in long-term policy planning documents (concepts, frameworks, strategies, etc.), if there is no indication of another reason, not associated with state capture, for a change of policy stance | A vote opposite to the recommendation of the responsible parliamentary committee could point to hidden external influences |
| 5. The committee responsible for the legislative initiative supports it, but the parliament opposes it in plenary, without providing justification | Balsojums pretēji parlamenta komisijas viedoklim var norādīt uz slēptu ārēju interešu ietekmi. |

Recommendations

In order to improve the trustworthiness of monitoring results, sufficient resources need to be devoted to becoming acquainted with political party programs (or party positions) and policy planning documents, and to ongoing comparative analysis of these sources with the substance of the legislative initiatives.

It must be noted that the decision-making process – both the formal procedures and the political traditions – can be substantially different in different countries. It is, therefore, imperative to consult with at least one expert on national legislative processes, in order to be able to identify, when procedures are normal, and when they digress from the normal.

During the monitoring exercise in the Latvian parliament, an additional indicator was often observed: situations, where members of parliament take decisions without understanding the actual or legal impact of these decisions. Members of parliament do not have sufficient information at hand to evaluate which policy option in a complex situation would offer the best result, and what consequences it would have. Poorly informed members of parliament create ideal conditions for state capture (for example, in the transport or energy sectors) by special interests.

This same problem can crop up with issues that seem quite simple, if parliament does not have time to devote to them. For example, this can happen if a ministry submits a last minute proposal to parliament for draft legislation, necessary for the implementation of EU regulations by set deadlines, and missing deadlines invokes financial penalties. Similarly, budget laws can be adopted in an imprudent time frame, and if the budget law is accompanied by amendments lobbied by special interests, there is a high likelihood that the members of parliament will approve these without having a thorough understanding of their impact and consequences. Manipulating legislative procedures is one of the simplest ways to implement state capture, leaving the majority of parliament unaware that they have been captured.

A similar issue can arise if the parliament is not captured, but the executive branch is. Parliament can quickly succumb to pressure from the executive to adopt new regulations (for example, if the country has no strong tradition of parliamentary oversight, or parliament lacks its own analytical capacity, which would allow members of parliament to evaluate the quality of proposals emanating from the executive branch).

In addition to the signs used in the Latvia monitoring, an additional risk factor for state capture can be identified: the selective or discriminatory practices of parliamentary committee chairs, not giving the floor to those, who wish to espouse opinions contrary to the chair's own. Additionally, the parliamentary practice of rejecting without justification constructive suggestions from the opposition raises red flags for state capture.

6. Table
Signs of state capture in the consideration of legislative initiatives – substance

| Criteria | Commentary |
|---|--|
| 1. Signs, pointing to illegitimate distortion of the business environment favorable to political party donors or other party affiliated special interests | <p>This can be either measures favoring one group, or creating barriers to another group.</p> <p>In order to identify this indicator, the monitor needs to have a good grasp of who the party donors are.</p> |
| 2. Broad discretionary powers for public officials to allocate public funds in a manner allowing for partiality and a lack of public explanation | <p>Hidden interests groups may have a desire to escape regulation or public scrutiny.</p> <p>When monitoring for this indicator, it is possible to include cases when a legislative initiative has been submitted to parliament to reduce discretionary powers of public officials, but this initiative is rejected.</p> |
| 3. Attempts to reduce the capacity and functioning of state institutions combatting corruption, or attempts to forestall strengthening these capacities with no justification | <p>In order to effectively monitor for this indicator, the monitor needs to have extensive knowledge of how institutional arrangements contribute to combatting corruption</p> |
| 4. Compromising the neutrality of public institutions, by reforming the appointment procedures of public officials, or by reducing financing of these institutions | <p>In other words – attempts to place in office «friendly faces», or eliminate the capacity of the institutions to function at all</p> |
| 5. Blocking or distorting legislative initiatives, which aim to improve transparency, change the party financing system, create more effective public participation mechanisms, promote democratic decision-making within political parties | <p>Civil society organizations in Latvia had, prior to the 2014 parliamentary elections, collected political promises from all parties elected to parliament on more than 20 anti-corruption initiatives. This enabled the monitoring of how these initiatives fared in parliament</p> |
| 6. Initiatives promoting transparency and oversight are submitted, but they are glaringly flawed, and there is no publicly available justification | <p>Sometimes political parties engaging in state capture imitate efforts to pass anti-corruption legislation, by offering poorly designed initiatives that parliament will fail to adopt.</p> |

Recommendations

The monitoring team needs to include experts with sufficient knowledge of the party donors and their areas of interest, as well as knowledge of anti-corruption measures in the executive branch, judicial branch and political life.

Monitors should have the opportunity to consult with sectoral experts on issues that may require deeper knowledge (for example, taxation, ports, energy).



3.3. Communicating monitoring results

The results from the Latvian monitoring exercise were published regularly, once a month, in two places: the website of the Centre for Public Policy PROVIDUS, and an internet site devoted to parliamentary oversight „Deputāti uz delnas» (www.deputati-uzdelnas.lv). With each publication, a press release was sent to the mass media, who on occasion would interview members of the monitoring team or seek commentary. The monitoring team recorded independent opinions of academics and experts from non-governmental and private organizations about the monitoring results and published them via Youtube.

Based on the monitoring experience, an analytical report was prepared, which took a closer look at the problems identified by the monitoring in the work of the parliament, the possible genesis of these problems, and recommendations for solutions. One of the recommendations – to make audio recordings of parliamentary committee hearings publicly available on the parliamentary website – was formulated as a petition, and put up for vote gathering on the web portal devoted to petitions: www.manabalss.lv.

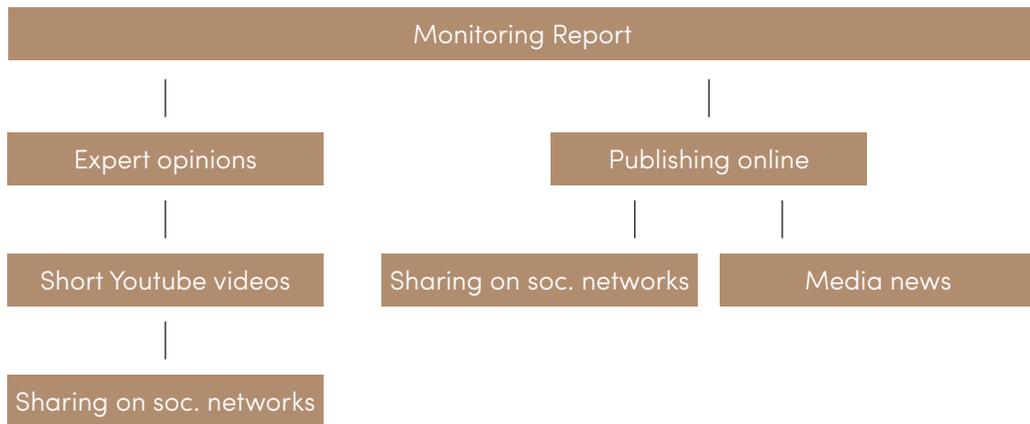
To sustain interest in the monitoring results, at the end of the project, one year before the next parliamentary elections, an overview was published on the PROVIDUS website of the 2014 political party commitments to support anti-corruption initiatives, together with an evaluation of how these commitments have been fulfilled. This handbook is also a part of the communications plan for the monitoring exercise, and will be distributed globally to Centre for Public Policies and non-governmental organizations who may find Latvia's experience useful.

Recommendations

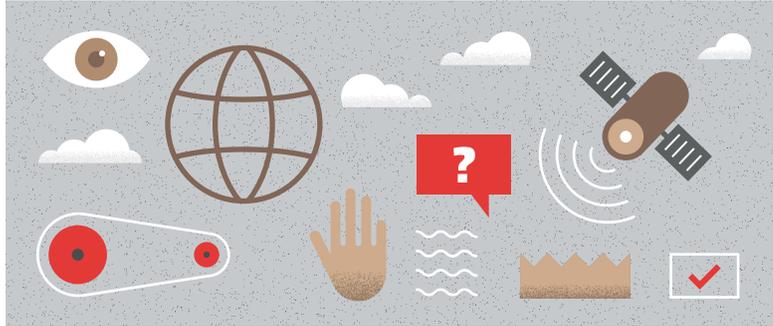
One must factor in that there will likely be criticisms aimed at the monitoring exercise, including attempts to doubt the legitimacy of civil society undertaking such monitoring, and assertions that this monitoring is serving the interests of its donors – either private interests or ideological interests. The monitoring team needs to be prepared to clearly state that civil society oversight is an important element of democracy, and to ensure that there is transparency about who is financing the monitoring, and the monitoring methodology being employed.

This monitoring methodology does not lead to a definite conclusion of corruption undertaken by concrete persons. Therefore, it is necessary to avoid statements that can be interpreted as accusations against persons for actions punishable by law.

Communicating monitoring results



4. Ideas for broadening and deepening monitoring



The monitoring methodology for state capture signs tested in Latvia can easily be broadened or deepened, communication plans can be enhanced, and follow-ups can be planned. In this case, the monitoring team would need additional time and human resources.

4.1. Going broader

Parliament takes many types of decisions, not only passing laws and appointing public officials. These can also contain signs of state capture, and it would be beneficial to include a broader scope of parliamentary decisions in the monitoring. For example, parliamentary decisions on the timetables for considering legislative initiatives may seem to be a technical issue, of no significance, however, if the timetable proposed is excessively brief (for example, a few days or even a few hours), then members of parliament may lack the time to properly examine the legislative initiative and identify the imprint of corrupt interests. If the timetable suggested is excessively lengthy, this can delay the implementation of measures aimed at eliminating state capture. Red flags may also be raised by parliament deciding to transfer consideration of an initiative from one committee to another. This type of change may be underpinned by the desire of a captor to ensure greater political support for his/her initiative, for example, if the captor has covertly come to an agreement with the committee chair, and recognizes that in this committee the other members of parliament rarely delve into the details of issues with which they are not already familiar.

Decision spectrum

Signs of state capture may also reside in the reactions of parliamentarians to ethical breaches by fellow parliamentarians, to petitions from citizens, to suggestions to create parliamentary investigative commissions, or to suggestions to submit questions to the executive branch. For example, parliament may decide not to punish a member for an ethical breach, if this member engages in a parliamentary investigative committee, which is investigating issues, in which the member himself is implicated. The parliamentary majority can fail to react to an anti-corruption initiative, submitted as a citizens' petition or a proposal for a referendum. Parliament can also reject parliamentary inquiries into the work of government, if these inquiries contain concerns about corruption.

If parliament has the power to approve or reject budgetary changes, these decisions would also be appropriate for monitoring, as would decisions, which define the procedures for parliament to work with the legislative initiatives tied to the budget (such as timetables for submitting amendments, procedures for deliberations). These seemingly technical issues can mask attempts to force through initiatives, denying members of parliament the chance to even notice signs of state capture.

Atypical areas

During the monitoring exercise in Latvia, it was not possible to monitor the work of all parliamentary committees, only those where the monitors identified the greatest risks of state capture. However, signs of state capture can be present in all issue areas, even those, such as education, culture or defense, which would not seem at first glance to pose many risks. A narrower choice of issue areas to monitor can be justified only by limited resources: if the monitoring team can be enlarged, there is no reason not to monitor all parliamentary committees. The published agendas of parliamentary committees are not always the best signs for potentially suspicious decisions. Often agendas include the line item: «other matters» or a similar descriptive, masking significant policy decisions. Hence, it is important that at least one person on the monitoring team is deeply knowledgeable about parliamentary procedures and practices.

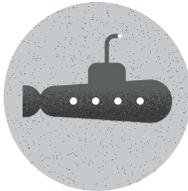
Conflict of interest

Another aspect pertinent to state capture are conflicts of interest of the members of parliament, for example, if the member of parliament holds other jobs in addition to his/her parliamentary

duties, such as working for a lobbying agency, or he/she himself or has relatives with an economic interest in particular parliamentary decisions. These cases would warrant inclusion in the monitoring process. A potential source of information would be data bases, which compile information gleaned from income declarations required of public officials, individuals and companies in tax arrears, enterprises and their officials donating to parties, and court judgements.

Not only the parliament

The monitoring in Latvia looked only at parliament. However, regulations affecting citizens, and potentially subject to state capture, are also adopted in the executive branch and at the local level. If a monitoring team would take this on, the signs described in this handbook would be very useful, however, a different methodology would need to be developed. Government decision-making often happens behind closed doors, and without much public discussion (no opposition parties in attendance). The weekly decision-making agenda is much larger, and technically more complex than in parliament. On a small scale, government can be monitored by examining parliamentary questions posed to the executive (in countries where this is a feature of political life) and the quality of response to these questions. This would assume, however, that at least a few parliamentarians have an interest in publicly querying the government on potential corruption.



4.2. Going deeper

Monitoring signs of state capture can also be taken deeper – not only broader – by taking a closer look at the substance of the legislative initiatives before parliament. Monitoring can go deeper in at least four directions:

1. In order to lessen the risk of subjectivity, the monitoring could be done by a team, not an individual.
2. The project team could engage a number of people skilled in legislative analysis and/or sectoral expertise, who could do their own analysis of the issues before parliament.
3. Cooperation could be sought with potential informants on suspicious legislative initiatives, for example by cultivating cooperation with non-governmental organizations.

4. A substantial media monitoring exercise could identify those legislative initiatives, that have attracted media interest due to problems.

Monitoring team

If the decision to include an initiative in the selected initiatives for monitoring, or the decision about whether or not an indicator applies to a particular situation is taken by one monitor, there is a risk that the result could be less trustworthy. A lack of knowledge of this one person, stereotypes, inability to process a huge volume of information, possible threats received, or other factors could have an effect on this person's decisions. To mitigate this risk, two or more monitors should be engaged, and daily work should be performed as a team, where each team member makes a separate determination on each case.

Expert involvement

The monitoring team will be better able to select legislative initiatives prone to state capture, if the team includes experts who have a deep knowledge of the legislative process, the ability to analyze legal documents, sound general knowledge about government and the economy, at least at the level of the average member of parliament. This means that the monitoring team would not need to rely on observations made by members of parliament themselves – they would have their own analytical capacity.

Of course, no monitor can have extensive knowledge in all legislative fields. However, if he/she can identify suspicious legislative initiatives, then this could be the basis on which to engage sectoral experts (academics, non-governmental organizations, journalists, other politicians), who have the expertise to examine the substance of the initiative and evaluate consequences of its passage.

External informants

Cooperation in deepening the monitoring of state capture can be a two way street. The monitoring team can create a network of contacts to turn to for advice, and these contacts can also signal to the monitoring team about initiatives that may be flying under the monitors' radar. The greatest value added from such a network of contacts could be from informants from these fields: industry associations, commercial enterprises, the legal and research services of parliament, political party representatives, journalists covering parliament or economic

How to work with information on corruption published in the media?

Consider, if you trust the media source – who are the owners, does the publication ensure a consistently high journalistic standard.

Consider, if the media source, in accusing someone of corruption, has used trusted and competent sources.

Are the allegations of corruption based on believable facts?

Media reports about politicians cannot be believed if the article/item has no author, or if the author is using a pseudonym or fake identity.

Facts from the media reported need to be double-checked – what do other media say, has anything else been published on this event.

How to work with information on corruption published in the media?

Is it possible, that this is a rumour that has been published, but will later be revoked?

If possible, request an explanation or opinion from the accused politician.

If using this information in a publication, references must be precise, identifying the original media source, so that the reader can understand how much these assertions rely on the media's conclusions about the politician. Precise citations are important in case of controversy arising between the publisher and the politician.

developments, members of parliament interested in preventing and combatting corruption, members of the President's staff (in cases where the President has a role in vetoing or suspending legislation). It is important for these people to be aware of the monitoring, and be encouraged to share information about suspicious cases. The monitoring team should plan time to meet with representatives of these groups to explain the significance of the monitoring, and process of monitoring, otherwise active engagement of these individuals may not be forthcoming.

Media monitoring

Monitoring for signs of state capture could also be deepened by including daily media monitoring of news from parliament about suspicious decisions or possible corruption. However, the media cannot be relied on as a single source, i.e. a legislative initiative should not be deemed as indicative of state capture solely on the basis of a media report. Media reports should be considered a source that requires independent confirmation. The following recommendations for working with information sourced from media has been prepared by PROVIDUS researcher Līga Stafecka, especially for this handbook ².

4.3. New ideas for communication

In order to raise awareness in the general public about the process and results of monitoring state capture, it is worth attempting to create informative partnerships with media outlets. Ideally, such a partnership could result in monthly programs about corruption in parliamentary decision-making, where journalists would invite monitors to discuss their monitoring results together with political party representatives. When considering additional public exposure for the monitoring results, the monitoring team needs to resolve two dilemmas:

1. Choose between the role of a corruption researcher and the mission of corruption prevention.
2. Choose between an analytical approach and «naming and shaming».

If the monitoring team sets as its goal immediate corruption prevention, then it would behave the team to react to every observed suspicious incident immediately and loudly, for example, by issuing press releases, creating blogs, or spreading news through social media. However, this type of action could significantly impact the behaviour of members of parliament

² Līga Stafecka has developed the Transparency International – Latvia internet portals about members of parliament and candidates for parliament, that provide information on the politicians' reputations.

and consequently create a false impression of how often or how rarely parliamentary decision-making shows signs of state capture. By emphasizing the researcher role, the monitoring team reduces the immediate impact on parliamentary practices, but increases the trustworthiness of the monitoring results over the course of the monitoring period.

The second dilemma also involves a choice between a comparatively large amount of media attention, or a more low-key media impact. The monitoring team must choose either to focus on highlighting suspicious situations involving particular politicians and political parties, or to only provide analytical descriptions of observations, without emphasizing particular political parties or individuals. In the first case, the media and the general public is liable to be very interested, in the second case it is likely that experts and practitioners will be most interested. If the monitoring team chooses to name individuals and parties, for example, by creating a «top 10 state capture list» or similar, the team risks creating a false impression about politicians or parties. The monitoring methodology described in this handbook allows one to identify signs of state capture, but does not provide a factual case for accusations of wrongdoing. This is a nuance that is not always easy to convey and understand. In publishing the monitoring reports, the monitoring team can always provide explanations and caveats, and provide a full methodology description. However, when the media receives this information, it is no longer up to the monitoring team to control how it is portrayed. Accusations of corruption or state capture can annihilate the reputation of a politician, therefore any accusations must be made in an extremely responsible manner.

Good practice in monitoring signs of state capture means allowing the members of parliament to comment on the monitoring results, preferable giving them a reasonable time frame prior to publication. For example, in cases where a member of parliament is identified by name as having submitted a suspicious initiative, the monitoring team could ask for his/her explanation a few days prior to publication. Ideally, the member of parliament should also have the opportunity to explain post-publication. A special section in the monitoring webpage could be created for this purpose, or an addendum published to the monitoring report itself.

When is the best time to publish results?

Prevention – immediate reaction.
For example, by issuing press releases, creating blogs, or spreading news through social media.

Research – publishing in a gradual, systemic manner. Reduces the immediate impact on parliamentary practices, but increases the trustworthiness of the monitoring results over the course of the monitoring period.

How to publish results?

Analytical approach – describe observations. Experts and practitioners will be most interested.

«Naming and Shaming» – publicly identify potentially guilty individuals. The media and the public is liable to be very interested. The risk – to create a false impression about politicians or parties.

4.4. Follow-ups

Over the course of the monitoring and at its conclusion, it is worth considering the value added of this work, and the possibilities for using the monitoring results for other purposes. For example, it would be possible to create an advocacy plan to solve problems identified during the monitoring: trying to improve access to information in parliament to ease similar monitoring efforts in the future, or trying to solve some systemic issues enabling state capture (such as compiling information on anti-corruption initiatives that have not been supported by parliament, and collect prior to the next elections political party positions on the future of these initiatives) ³. It would be desirable to repeat the monitoring after several years, if organizational resources allow for it. This would enable an analysis of the dynamics of change – have the signs of state capture increased or decreased, are the same or different signs now prevalent.

³For inspiration, civil society success stories on advocating for lobbying transparency can be found in the Transparency International - Latvia handbook from 2016: «Handbook on citizen initiatives promoting lobbying transparency, lobbying integrity and equality of access», www.providus.lv/en/article/handbook-on-citizen-initiatives-promoting-lobbying-transparency-lobbying-integrity-and-equality-of-access



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