

Input by Public Eye on corporate political engagement

Public Eye is a Swiss NGO dedicated to the pursuit of global justice and solidarity. Public Eye fights against injustices that originate in Switzerland. To this aim, it reveals and sheds light on practices of Swiss corporations that have had an adverse impact on human rights, labour rights and the environment abroad.

Public Eye welcomes this opportunity to submit an input on corporate capture and political engagement. The following input bases upon our over five decades long experience in advocating for legal and political change in the regulation of transnational businesses in Switzerland, and beyond.

Our first point relates to the **definition of corporate capture**. This definition must account for the fine line between legitimate corporate attempts to shape public policies and undue political influence. We suggest defining corporate capture as the successful attempt by economically powerful groups and organisations to influence political actors, processes, decisions, and structures to their own economic benefit and to the *systematic* and *lasting* detriment of public interests and the common good. Corporate capture should not be limited to illegal or illegitimate conduct but may encompass various forms of exercising influence, legal and illegal, overt and covert, direct and indirect. Furthermore, it should be noted that the exercise of influence may be directed towards all state powers – the legislative, executive and judiciary – as well as the ‘forth power’ of the media. Through this fourth power in the democratic state, corporations shape and define the public discourse, they have set the stage of what is perceived as ‘common sense’, of what is ‘sayable’ and what is not. For example, a new ‘common sense’ assumption has become the idea that global challenges, first and foremost climate change, can best be tackled through private businesses.

Second, for HRDD processes to successfully interfere in the undue exercise of influence, the information note needs to document **the steps and tactics of corporate capture**. We note here in particular that corporate capture is more effective the less it is perceived as such. A common **strategy of concealing** is the presentation of investors and corporations as “partners and “problem solvers”. Often, however, these problems have been caused by the corporations and investors themselves. Furthermore, corporate capture is not only concealed in certain catchphrases, such as the ones just mentioned, but often happens behind closed doors. Corporations benefit from a **lack of transparency** regarding political processes and the development trajectories of laws and policies. Even more problematic, the presence of corporations in political processes has become so normal and endemic that corporate capture is hidden in plain sight. A function of HRDD reports should consist in, first, defamiliarising this corporate presence, and second, documenting corporations’ exercise of influence.

When scrutinising the steps and tactics of corporate capture, special attention should be paid to more covert forms of corporate influence on political processes, including targeted influence on public discourse and economic leverage on media as well as influence on research and universities through third-party funded research, sponsorship, and endowed professorships.

Third, the information note should focus on the **dangers and negative effects of corporate capture**. In our experience, corporate capture poses a threat to the common good, democracy and the realisation of human rights. This threat yields short-, medium- and long-term effects. In the short term, individual economic interests prevail over the general interests of a politically constituted community. In the medium term, corporate capture cements and exacerbates asymmetric power relations between social groups, it reinforces inequality by giving already powerful actors even more influence, resources, and opportunities, which they in turn can use for new or deepened attempts to exert influence. In the long term, corporate capture can undermine the legitimacy of democratic structures and systems, as well as trust in political decision-makers and public institutions. The more advanced corporate capture is and the more it manifests itself in institutions, contracts, laws, and habits, the more it can undermine the legitimacy of democratic structures and systems, laws and customs, and the more difficult it becomes to combat it by means of democratically legitimized regulation. Examples also show that it is inherently difficult to prove corporate capture in black and white, and that citizens and civil society can usually only summarise the mounting evidence, which is then often attacked and presented as rumours.

To supplement this third point of input, we offer the following examples. In 2019, Christian Frutiger was appointed Assistant Director General and Head of Global Cooperation of the Swiss Agency for Development and Cooperation (SDC), the agency for international cooperation of the Federal Department of Foreign Affairs (FDFA). Prior to this appointment, Mr. Frutiger was Public Affairs Manager, Human Rights, Water and Stakeholder Relations at Nestlé S.A and later Global Head of Public Affairs at the Nestlé Group. In these positions, he was also responsible for human rights, water rights. At SDC he is now overseeing and steering Switzerland's projects on access to clean water, and water more generally. Worryingly, his appointment triggered only very little public outcry. Another, albeit related, example is the collaboration of the SDC with the Water Resource Group, a trust fund hosted by the World Bank Group that counts Nestlé, Pepsi and Coca Cola as members. [The focus of the Water Resource Group](#) seems – based on its membership- primarily to include efforts to privatise access to water.

Forth, **state-based measures** to the above-described processes and effects of corporate capture range from transparency rules to lobby registers and participation requirements. States should introduce transparency laws to oblige parties and other political actors to reveal their funders and origin of financial and logistical contributions. In addition, the legislative trajectory of a new law, including the actors, processes, and decisions, should be made transparent. A publicly available lobby register is a crucial part of this transparency of the legislative footprint.

Alongside these transparency rules, states must ensure that the participation in political decision-making and decision-making is equal, fair and transparent. In particular, an adequate representation of civil society groups must be ensured, and they must be supervised and governed by the affected states. Public private partnerships should be limited to the provision of services and goods that are not essential for the well-being of society as a whole as well as particular individuals of society. States should consider excluding the provision of public services and welfare state tasks, such as water, electricity, health, asylum centres and prisons, from public private partnerships. If states decide to partner with private corporations their contracts and agreements should at least be made public.

Fifth, in addition to these state-based measures, **businesses must consider, document, and mitigate the risks** which their exercise of influence on political institutions and actors pose to human rights and the environment. At a minimum, they must document any efforts to influence political process, including lobbying expenses and political donations, memberships in political groups and connections to politically exposed persons. Furthermore, they must reveal any personal connections to political actors. As part of their HRDD obligation, this responsibility is complementary to the above-mentioned state measures. Especially, businesses should make public their involvement in the development, design and definition of public policies; the selection, approval and certification of public goods providers; publicly-funded research activities as well as education; the use of public products and public services. We consider this duty to be part of the HRDD process which businesses have to implement and conduct as part of their human rights duties under Pillar II of the UNGPs.

To conclude, we consider corporate capture to be a very serious threat to democratic governance and the realisation of human rights and environmental protection. We greatly appreciate your efforts in raising awareness on the interlinkages between the UNGPs and corporate capture and shedding light on the challenges corporate capture has posed to the implementation of the UNGPs.

Yours sincerely,

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