

# Countering State Capture

## *Outcomes Summary*

Review of the **Think Tank Fund** Thematic Initiative Portfolio on October 15, 2015

### Participants

**Andrej Nosko** (*portfolio lead*): Program Manager at the Open Society Think Tank Fund (TTF)

**Chris Stone** (*discussant*): President of the Open Society Foundations

**Goran Buldioski** (*moderator*): Program Director of TTF and Co-director of the Open Society Initiative for Europe (OSIFE)

### Observers

**Alisher Ilkhamov**, Program Manager, Uzbekistan, Eurasia Program

**Daniel Sershen**, Associate Director of Strategy, Results Assessment, Strategy Unit

**Donal Mac Fhearraigh**, Program Officer, OSIFE

**Eleonor Kelly**, Senior International Communications Officer, Communications

**Erica Razook**, Legal Officer, Open Society Justice Initiative

**Janet Haven**, Associate Program Director, Information Program

**Julie McCarthy**, Director, Fiscal Governance Program

**Ken Hurwitz**, Senior Legal Officer, Open Society Justice Initiative

**Magda Adamowicz**, Program Coordinator, Human Rights Initiative

**Masha Djordjevic**, Program Manager, TTF

**Shailey Hingorani**, Presidential Fellow, Office of the President

**Subarna Mathes**, Program Officer, Fiscal Governance Program

**Timea Mikola**, Administrative Coordinator, TTF

**Viorel Ursu**, Regional Manager- Advocacy, Research and Regional Initiatives, Eurasia Program

**Vlad Galushko**, Program Manager, TTF

### Outcomes Summary

President Chris Stone and other participants complimented the portfolio review document, and agreed it laid the foundation for a rich conceptual discussion that revolved around the following topics: refining the theory of change and the difference between anti-corruption work and countering state capture; defining the role of and opportunity for think tanks in countering state capture; and developing guiding questions for the process how to take this work forward as TTF and OSIFE merge.

After Andrej presented the portfolio, Chris asked what TTF staff would have done differently to execute the theory of change more effectively. Specifically, he asked whether we would have awarded different grants or engaged in different activities, what audiences we were trying to reach by hiring a journalist, and whether we saw a different role for the business sector in this work.

Andrej emphasized that if we were to carry out this portfolio of grants anew, we would have handled the portfolio not as a set of disparate grants, but by approaching each country as a case and designing comprehensive interventions for each one. This would have included spearheading country-specific networks not only of think tanks but of a variety of actors, which TTF started doing only in the last two years. The starting point of our intervention in each country would have been identifying a convener with a clear diagnosis of problems and understanding of the reform agenda. In addition to grants, we would have also

considered using different tools, such as strategic litigation, building on OSIFE/OSJI experience. Andrej explained that within the current period, although TTF has followed business developments related to state capture closely and recognizes its important role for improving the sustainability of this work, we have not yet cooperated with the business sector.

Then Chris probed the robustness of TTF's theory of change and its alternatives. He noted that the Czech government had passed a set of nine anti-corruption laws this year. If they were labeled as anti-corruption, how did they fit TTF's definition of state capture, and therefore its theory of change? He pointed out that the language of "state capture" is a little bit grandiose, and that he was concerned that we might lose the specificity that would let us drive and improve the portfolio. He suggested that the starting point in the strategy revision should be tightening the theory of change.

Finally, Chris shared his surprise to find think tanks identified as key organizations to tackle this problem. He wondered what the exact mechanism through which think tanks could challenge state capture was. What would be the practical role of "intellectual muscle" in countering state capture, especially if state capture is a problem of *public* attitudes and not due to *policy* failure, as perhaps Ukraine today demonstrates? Specifically, Chris asked what exactly think tanks delivered to these coalitions, and whether the coalitions were the right mechanism to instigate the intended social change. For example, why did change happen in the Czech Republic, and did it provide a fertile fallacy?

Andrej explained that TTF has been developing a comprehensive definition of state capture throughout the implementation of the portfolio. The latest call for proposals stipulated that successful approaches must look at corruption within the whole governance system. TTF assumed that the most effective way of exerting public pressure on state capture is through cooperation and wide coalitions comprising concerned individuals, NGOs, businesses, and reform-minded politicians, where think tanks would provide these coalitions with systematic analysis of state capture, followed by developing policy responses and provision of these civic coalitions with policy recommendations and strategic advocacy efforts. While coalitions can advance policies that will undo state capture, they can only succeed (or are better at succeeding) if think tanks are part of these coalitions. In terms of clarifying the language, Andrej explained that since state capture may use corruption methods, countering state capture may include anti-corruption work, but is not sufficient to counter state capture.

Andrej admitted that the portfolio is in the early stages of delivering specific results; they took three to five years in the Czech Republic and Romania to develop. Andrej also emphasized that successful coalitions need to combine both organizations that can talk to the public and those that can devise technical reforms and sustain them over long periods. Goran added that think tanks are not the leaders of these coalitions, given the known limitations of their communication. Their role is to contribute perseverance and intellectual ammunition.

## Discussion / Other Contributions

Julie McCarthy appreciated the conceptual distinction between state capture and accountability-driven approaches in the portfolio review document, but did not find the theory of change that stemmed from it compelling enough. She presented her own theory of change describing how state capture can be disrupted around the world in different scenarios, and highlighted a scenario where the middle class could play a role as being the setting in which think tanks could be most effective. Appreciating Julie's contribution, Andrej noted that different political opportunities may require different theories of change. Some of the scenarios Julie mentioned would not be applicable in TTF's context of the EU and its immediate neighbors. Goran observed that we have to properly map both the geography and the actors in order to determine whether there is an opportunity where think tanks are the best actors or not. Vlad further added that we see different types of state capture, as in Ukraine today, where ruling elites are just biting around the edges by performing only minor technical measures in order to avoid deep reform that could harm the captured system.

Ken Hurwitz also found the distinction between state capture and corruption in the document interesting, but he was not persuaded by the example of Hungary, voicing his skepticism of Transparency International's Corruption Perception Index. In his view, ideologically driven autocracies precede profit-driven autocracies, and they may be phases in development, rather than essential distinct states. Ken suggested that maybe there is no theory of change in terms of what creates the actual spark for change, but rather the focus could be on what we do when that spark happens. Reflecting on the importance of coalitions is a way of reflecting on all those possibilities of what goes into construction of the open space for change, and the Arab spring and Ukraine are unsettling examples of how lack of preparation for that moment can lead to poor outcomes. Ken noted that the people on the streets who are creating the change are not the best ones to lock this change in. It is exactly at the moments where technical expertise is required that a lot of social change has been defeated. Therefore if think tankers can enter these opportunities with the legitimacy of a wide popular movement and can explain the policy plan and translate it into technical details and legislative proposals, they could be seminal contributors to furthering social change and preventing its rollback.

Andrej responded that think tanks are not the best for starting social change, but it is true that once the opportunity is there, whether the change is lasting depends on how the opportunity is translated into technical and legislative measures. Especially in countries in later stages of their transition, semi-consolidated or consolidated democracies (the latter in cases of regulatory capture), this is how the social change happens. In contexts where laws matter (recognizing that there are context where they don't), think tanks can be important contributors and guarantors that social change translates into legal reality. Goran added that think tanks can also play an important role in safeguarding against the defeat of social change. Almost everything in Europe has become a technical exercise. Therefore it is important to have direct linkages with the political system. Many of the think tanks have not been anti-corruption hawks, and their commitment now to countering state capture is a marker of need for deep political change, as we see in the case of Hungary.

Donal Mac Fhearraigh provided another example of the importance of coalitions based on OSIFE's work on abusive lending and how this work can tie into the future portfolio in form of countering regulatory capture in Western Europe. Masha Djordjevic noted the importance of coalitions and role of think tanks played in the Western Balkans. The fragmented actors in civil society had tried their best, but political actors used their lack of coordination to play them against each other. There is an important advantage to bringing together the best and most powerful NGOs. This coordination helps diverse organizations ensure their work is complementary and avoid being played against each other.

Magda Adamowicz raised the question of the security of TTF's grantees. Andrej welcomed the question and agreed that whenever grantees have influence and threaten the business of criminals, they are at risk. We should have this important conversation and should discuss with grantees the various aspects of security including physical, data, privacy, and litigation risks.

## Future

Chris specifically noted that we have to take into account the questions raised in relation to the distinction between state capture and anti-corruption work. TTF has to clarify if it is running an anti-corruption program or addressing a different phenomenon (state capture). He stressed that if it is the latter, we have some work to do before we move forward.

The other question is at which stage the work of think tanks matters. Are think tanks meant to step in at the right moment when social change occurs, or is their work also influencing the occurrence of that moment? We should clarify whether we are contributing to the creation of the opportunity, waiting for the opportunity to arise, or both. We should also reflect on the mechanism of change. What is the exact contribution of think tanks? What matters to change things? Is it policy, technology of governance, governance design? We need to discuss whether we can capture-proof a government through the policy/legal means of technical legislative change, or whether it requires more holistic transformation that might include political change, development of leadership and public norms, values, or even economic development.

Andrej recapped, noting that this discussion comes at a very opportune moment for OSIFE and TTF, when the two entities are combining their work in this area. In the upcoming period, we will tap into a larger pool of actors. We are already working on tackling the issue of conceptual clarity by bringing researchers and academics working on the topic together in December in Istanbul. There we would like to have a conversation around comparative index or methodology that would serve as a baseline and comparative assessment for us and others working on countering particularism in governance.

We are also planning to extend the scope of support beyond think tanks. Through this, we plan to refine our sense of collaboration and understanding of what the conditions are for state capture. Going forward we will need to see how to mix and match different actors and different activities (strategic litigation, consumer groups, working with business). Donal provided detail on OSIFE's current work with movements and coalitions, which has focused on the victims of austerity and abusive mortgage lending. The next step in integrating this work in Western Europe will be to connect it with the capture of regulation and capture of industry segments (rather than whole countries as in Eastern Europe).

We also will work on creating conditions for sustainability by ensuring that this work can be demonstrated to other funders. In this effort, OSIFE has the support of Alina Mungiu-Pippidi, one of the eminent researchers on the topic in Europe and an OSIFE advisory board member.

### **Statement describing the most significant outcomes of the review**

The discussion mainly focused on the conceptual underpinnings of state capture, what it means as opposed to corruption, and how a better understanding of this concept can help clarify the work TTF has been carrying out over the last two years. We also examined the roles think tanks play in this area as opposed to what advocacy and watchdog NGOs do. In designing the new joint portfolio with OSIFE, OSF President asked TTF to improve the conceptual clarity of its theory of change including its scope and antecedent conditions, circumstances under which this framework can be applied, and identification of a broader group of stakeholders. This clarification should happen within the regular strategy cycle.