# Oxfam’s submission[[1]](#footnote-1) to the UN WG on Business and HRs’ call for inputs: *Ensuring business respect for human rights in the political and regulatory sphere and preventing ‘corporate capture’.*

*“Massive concentration (of power) also means massive political influence. Giant companies can use their economic power to spend unlimited sums of money electing and manipulating politicians who will do their bidding”.[[2]](#footnote-2)* Elizabeth A. Warren, US Senator.

The relation between business and human rights has always been in the spotlight due to the lack of real accountability of many businesses activities and several cases of persistent violations of human rights in some regions. The global reach of multi-national corporations has meant unlimited capacity to avoid different regulations –i.e., taxes –, and leverage to influence (sometimes even write) public policies and regulations so as to respond to their interests. The analysis of this phenomenon has mainly focused on corruption. Even though there is a consensus of the importance of corruption, OXFAM links it more specifically, to ‘political capture’.

Political capture could be defined as “the exercise of abusive influence by extractive elites to favor their interests and priorities to the detriment of the general good”.[[3]](#footnote-3) It is directly linked to the accumulation of power in a very few hands and, therefore, to inequality. The more unequal a society is, the more power is accumulated in the hands of a limited number of actors. Therefore, when we talk about political capture, we are referring to power and how and why it accumulates. Businesses, and mainly big businesses, are without any doubt one of the main actors controlling many of the strategic resources that generate power (i.e. water, vaccines, land or data).

However, the key element is how the control of strategic resources translates into economic power and, most importantly, political power. Without proper regulations in place that are effectively enforced, this political power can easily translate into high capacity to influence public regulations and laws to benefit particular interests. These privileged interests can have harmful impacts in the legitimacy of the system, democracy, inequality and the respect of human rights.

OXFAM fights to tackle inequality and defend human rights. In order to so, the playing field has to be even for all the stakeholders regardless of their economic status, race or gender. This is why understanding political capture, how it works, who uses it and find solutions to it is increasingly becoming more important for Oxfam and an area in constant development. OXFAM acknowledges that the asymmetries in power relations are inherent to any context. The goal is to diminish its impact on public policies in order to ensure human rights are protected and democracy safeguarded.

OXFAM has elaborated several analysis of the relation between inequality and political capture[[4]](#footnote-4); has published a guide to analyze political capture of public policies;[[5]](#footnote-5) and has published several reports and discussions papers with examples of how the elites’ interests (among them businesses) are privileged in the decision-making process over those of society at large.[[6]](#footnote-6) All these resources are publicly available and we hope will contribute to the UN Working Group’s efforts on the topic.

## Question: How should ‘corporate capture’ and its connection with human rights be defined? What distinguishes legitimate corporate political engagement from undue political influence by businesses which carries human rights risks?

The connection should be defined as the exercise of abusive influence by some corporations to privilege their interests over the protection of human rights. However, this influence can be exercised both with legal and illegal mechanisms. Here lies a crucial difference with corruption. This fine line is extremely important so to analyze the legitimacy of some of the actions that business groups develop to influence policymaking. The participation in public open debates, submissions to public consultations, organization of panels or advocacy-registered meetings are some examples of legitimate and transparent political engagement by businesses. On the other hand, activities under the informality, conflict of interests due to revolving doors, contributions of political campaigns that translate into public contracts, etc. are examples of undue political influence. In a nutshell, undue political influence arises when the political process is neither public nor transparent, access to the decision making process is asymmetric or non-democratic, and the key elements of the public policy or regulation are biased towards private interests from a group instead of a clear protection of human rights.[[7]](#footnote-7) Lastly, undue influence is at its highest risk in those policies or regulations in which the businesses interests are highly concentrated and / or the interests of the different businesses have cohesion.

One crucial element in this connection between capture and human rights is the creation of knowledge and the flow of information. This has been a type of capture that has been used by several businesses groups and more attention should be paid to it. Using scientific research, media under the ownership of businesses groups, the funding of think tanks and social media, businesses groups can capture the narrative and the agenda about a specific topic.

## Question: are there specific examples of undue corporate influence that has led to government decision-making that negatively impacts human rights? Are there specific sectors where this has taken place either in the domestic or global context?

There are several examples of political capture by businesses group with an impact in human rights. It is important, though, to highlight that this impact can be direct or indirect and happen in several sectors and public policies. For instance, a specific company can capture a regulation targeted to increase environmental standards in a region so to diminish regulation’s effects in its activities. This will have a potential direct impact into communities and the environment. In parallel, the same company can also capture global standards (i.e. tax or environmental laws) by lobbying a government or even an international process and thus have an indirect impact on human rights. Oxfam has written about a case involving a big oil company in the US.[[8]](#footnote-8)

Extractives and food are two specific sectors in which the phenomenon of political / corporate capture has a clear impact in human rights. Water is a natural resource captured in many countries by business groups to their benefit thus denying its access to parts of the population who are even displaced. Political capture plays a crucial role in it. Mexico or Chile are two clear cases. In Mexico, Oxfam has documented how automotive and breweries benefit from the capture of the regulations of water so as to favor its industrial use over the access by the local population.[[9]](#footnote-9) In the case of Chile, the control of the land and water resources by big agroindustry and mining and timber companies is another example of the privatization of this natural resource in order to benefit few business groups with a severe impact on human rights.[[10]](#footnote-10)

The big oil industry is also one of the main businesses groups capturing public policies and regulations at both domestic and global level. These regulations tailor-made to benefit the industry have a deep impact in human rights. Tax exemptions are a classical example of how big oil industry captures and thus it allows it to continue business as usual with the direct impact on several human rights.[[11]](#footnote-11)

On food, there are several examples in which big business has captured food policies in their favor. In Chile, several business groups delayed the nutritional labeling for almost 15 years, capturing all the initiatives proposed in the country; in Colombia the senators who blocked the *Junk Food Law* received 125k USD from business groups; etc;[[12]](#footnote-12) last but not least, in Brazil the agroindustry has been pushing to reduce environmental restrictions on livestock farming,[[13]](#footnote-13) and even appointed the Ministry of Agriculture.[[14]](#footnote-14)

Big consultancy firms also play a role in developing political capture for their clients, implementing laws that can harm labor rights and other regulations. For instance, some firms have been exposed as enablers of authoritarian regimes, helping them to implement and even write development plans for them.[[15]](#footnote-15)

Finally, it is worth mentioning the case of vaccines in fighting COVID19. The big pharma industry is protecting itself from waiving Intellectual Property Rights at the WTO, thus denying the access to vaccines to millions of people in developing countries.[[16]](#footnote-16) Even with an overwhelming majority of countries in favor of such a waiver, the industry continues to vehemently lobby against it. Furthermore, in some cases, big pharma companies have pushed for beneficial regulations in their favor in order to rollout the vaccines.[[17]](#footnote-17)

The strategies and mechanisms of the big business groups to capture regulations are similar. Lobbying, revolving doors, suing governments and human rights defenders, delaying laws, financing politics, media campaign among others are used in order to prioritize the interests of these groups above the public one.[[18]](#footnote-18) Many of these mechanisms are legal, hence the difficulty to address political / corporate capture.

## Question: What measures can States take to prevent and address corporate political activities that may undermine the State’s ability to protect human rights and business responsibility to respect human rights, including situations arising from trade and investment frameworks?

One first measure that States can implement to prevent political / corporate capture is to analyze the impact of the public policies and regulations in the power relations of the context. This political economy analysis can help the governments to assess which private interests are at stake and thus anticipate potential processes that could be captured.

Secondly, States and governments should have a more proactive position towards some topics or sectors that will become strategic and in which private interests will be pushing for regulations more prone to their interests. The tech sector, for instance, is a sector with strategic importance in which several business groups are going to fight to make their interests prevail and have favorable regulations.[[19]](#footnote-19)

Thirdly, the States must work towards the dismantling of monopolies and monopsonies and find economic alternatives in the sectors where the concentration of power is more acute. In this sense, the economic sectors that are getting prioritized in the international agenda (i.e. Green Finance) must be closely monitored because they are going to become potential recipients of massive inflows of public and private investment mainly through the International Financial Institutions. In these sectors, political / corporate capture is more probable due to the high interests at stake.

Fourthly, states must analyze the processes of capture in collaboration with different stakeholders. This joint analysis can serve the purpose of (i) preventing it; (ii) prepare mechanisms to face these risks; and (iv) raise the alarm about this phenomenon. In this analysis, the international community can help provide expertise and financial support in developing countries.

Fifthly, how political campaigns, advertising and candidates are financed –the ‘finance of democracy’ – is one of the areas in which governments have to pay more attention. Not only related to money laundering but also in the ways in which big business groups finance campaigns and how it leads to a direct avenue to political / corporate capture. The Odebrecht scandal is an example of the impact of big business capture of politicians at the regional scale.[[20]](#footnote-20)

Lastly, States and governments must be aware of which sectors are more sensible to potential violations of human rights and ensure they refrain from political / corporate capture. In order to do so, the States must assess the strategic resources of power in their jurisidictions, as these will be the main targets of capture.

## OXFAM Resources:

Publications:

1. [*The capture phenomenon: unmasking power*](https://cdn2.hubspot.net/hubfs/426027/Oxfam-Website/oi-informes/Capture_Methodology_2018-en.pdf)*.*
2. [*Captura política, grandes concentraciones y control de agua en México*](https://www.oxfammexico.org/sites/default/files/INFORME_AGUA.pdf)
3. [*Captured Democracies: a government for the few*](https://www.oxfam.org/en/research/captured-democracies-government-few)
4. [*Crisis y captura: el descontento social en tiempos de pandemia en América Latina y el Caribe*](file:///C%3A%5CUsers%5CITamir%5CPictures%5CCrisis%20y%20captura%3A%20el%20descontento%20social%20en%20tiempos%20de%20pandemia%20en%20Am%C3%A9rica%20Latina%20y%20el%20Caribe.%20https%3A%5Cpolicy-practice.oxfam.org%5Cresources%5Ccrisis-y-captura-el-descontento-social-en-tiempos-de-pandemia-en-america-latina-621200%5C)*.*
5. [*Working for the Few*](https://www.oxfam.org/en/research/working-few)
6. [*Power Profits and the Pandemic*](https://www.oxfam.org/en/research/power-profits-and-pandemic)
7. [*Prescription for Poverty*](https://www.oxfam.org/en/research/prescription-poverty)
8. [*Dollars and Sense*](https://www.oxfamamerica.org/explore/research-publications/dollars-and-sense/)
9. [*Tax Battles*](https://www.oxfamamerica.org/explore/research-publications/tax-battles/)
10. [*Broken at the Top*](https://s3.amazonaws.com/oxfam-us/www/static/media/files/Broken_at_the_Top_FINAL_EMBARGOED_4.12.2016.pdf)
11. [*Rigged Reform*](https://s3.amazonaws.com/oxfam-us/www/static/media/files/Rigged_Reform_FINAL.pdf)
12. [*EITI falters on corporate accountability*](https://www.oxfamamerica.org/explore/research-publications/eiti-falters-on-corporate-accountability/)

Blogs:

1. [*Are US Corporations About to Change Their Ways?*](https://politicsofpoverty.oxfamamerica.org/us-corporations-change-their-ways-business-roundtable/)
2. [*Corporate America: Protecting its own even if bad for business*](https://politicsofpoverty.oxfamamerica.org/corporate-america-protecting-its-own/)
3. [*The Moment is Here: Is Congress going to override the will of the people—again?*](https://politicsofpoverty.oxfamamerica.org/congress-tax-the-rich/)
4. [*Chocolate, Slave Labor and Corporate Greed*](https://politicsofpoverty.oxfamamerica.org/chocolate-slave-labor-and-corporate-greed/)
5. [*ExxonMobil Says one thing—and lobbies for another. How can we hold companies accountable for what they do in the dark?*](https://politicsofpoverty.oxfamamerica.org/exxonmobil-says-one-thingand-lobbies-for-another-how-can-we-hold-companies-accountable-for-what-they-do-in-the-dark/)
6. [*Big pharma must put people over profits to end the COVID-19 crisis*](https://politicsofpoverty.oxfamamerica.org/big-pharma-must-put-people-over-profits-end-covid-19-crisis-vaccines/)
7. [*No More Secret Deals*](https://politicsofpoverty.oxfamamerica.org/no-more-secret-deals-contract-disclosure-eiti/)
8. [*Words Matter, But lobbying dollars get the job done*](https://politicsofpoverty.oxfamamerica.org/words-matter-but-lobbying-dollars-get-the-job-done/)
1. *The information provided in this document is based on existing discussion papers by Oxfam staff. In its totality, this does not yet constitute firm Oxfam policy.* [↑](#footnote-ref-1)
2. <https://elizabethwarren.com/plans/promoting-competitive-markets> [↑](#footnote-ref-2)
3. OXFAM Intermon. (2018). *The capture phenomenon: unmasking power.* <https://cdn2.hubspot.net/hubfs/426027/Oxfam-Website/oi-informes/Capture_Methodology_2018-en.pdf> [↑](#footnote-ref-3)
4. See: OXFAM International. (2014). *Working for the few*. <https://www.oxfam.org/en/research/working-few>*;* OXFAM International. (2021). *Crisis y captura: el descontento social en tiempos de pandemia en América Latina y el Caribe.* <https://policy-practice.oxfam.org/resources/crisis-y-captura-el-descontento-social-en-tiempos-de-pandemia-en-america-latina-621200/> [↑](#footnote-ref-4)
5. Oxfam Intermon. (2018) [↑](#footnote-ref-5)
6. Oxfam International. (2018). *Captured Democracies: a government for the few.* <https://www.oxfam.org/en/research/captured-democracies-government-few> [↑](#footnote-ref-6)
7. See as well: OECD. (2017). *Preventing policy capture: integrity in public decision-making.*  [↑](#footnote-ref-7)
8. <https://politicsofpoverty.oxfamamerica.org/exxonmobil-says-one-thingand-lobbies-for-another-how-can-we-hold-companies-accountable-for-what-they-do-in-the-dark/> [↑](#footnote-ref-8)
9. Oxfam Mexico. (2019). *Captura política, grandes concentraciones y control de agua en México.* <https://www.oxfammexico.org/sites/default/files/INFORME_AGUA.pdf> [↑](#footnote-ref-9)
10. <https://www.bbc.com/mundo/noticias-51622758> [↑](#footnote-ref-10)
11. <https://foe.org/resources/12-guilty-fogeys-big-oils-86-billion-offshore-tax-bonanza/> [↑](#footnote-ref-11)
12. <https://ctxt.es/es/20210801/Politica/36919/Bocado-politicas-publicas-alimentos-marcas-lobbis-comida-basura.htm?fbclid=IwAR0VZRDuBgoxBqe8_0FvZ0LRXI4jnf0sbjMSdhdZQKmj5YogvfIEumAh1Bg> [↑](#footnote-ref-12)
13. <https://www.sciencedirect.com/science/article/abs/pii/S0264837719314899> [↑](#footnote-ref-13)
14. <https://www.reuters.com/article/us-brazil-politics-agriculture-idUSKCN1OW0OS> [↑](#footnote-ref-14)
15. <https://www.nytimes.com/2018/12/15/world/asia/mckinsey-china-russia.html> [↑](#footnote-ref-15)
16. <https://politicsofpoverty.oxfamamerica.org/corporate-america-protecting-its-own/> [↑](#footnote-ref-16)
17. <https://www.thebureauinvestigates.com/stories/2021-02-23/held-to-ransom-pfizer-demands-governments-gamble-with-state-assets-to-secure-vaccine-deal> [↑](#footnote-ref-17)
18. See a posible taxonomy of mechanisms in: Oxfam Intermon. (2018). [↑](#footnote-ref-18)
19. <https://corporateeurope.org/en/2020/09/big-tech-lobbying> [↑](#footnote-ref-19)
20. https://www.bbc.com/news/business-39194395 [↑](#footnote-ref-20)