



KERRY LONGHURST

Institute of Political Sciences and International Relations Collegium Civitas

ORCID: 0000-0002-4710-2640

kerry.longhurst@gmail.com

Structural distortions: re-examining state capture in Moldova and apprising its persistence and effects

Wypaczenia strukturalne: ponowne badanie stanu zawłaszczenia państwa w Mołdawii oraz oszacowanie jego trwałości i skutków

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Structural distortions: re-examining state capture in Moldova and apprising its persistence and effects

Moldova is a textbook-plus case of a captured state, a condition synonymous with a number of post-Soviet countries. Moldova's state capture resulted from its post-1991 partial reform path which enabled the emergence of oligarchs able to seize core state functions and distort business environments to the detriment of the public good. Moldova is significant because of the extremity of its state capture with a single oligarchic network shaping the rules of the game in political, economic, social and to a degree foreign policy terms. This situation created a vicious circle, which hindered Moldova's development, reinforced poverty and the hollowing out of the state through mass migration. 2021 offers a vantage point to consider whether Moldova can shed its capture via the anti-corruption reform programme set out by president Maia Sandu or whether prospects for change are more likely to be impeded by persistent vested interests keen to keep the *status quo*. Future remedies for Moldova hinge on there being palpable socio-economic improvements to people's lives, twinned with successful prosecutions of those responsible for large-scale acts of corruption and embezzlement. Aside from this, reforms need to hone in on improving the business environment, the weaving in of women's empowerment and providing solutions to stem outwards migration.

Wypaczenia strukturalne: ponowne badanie stanu zawłaszczenia państwa w Mołdawii oraz oszacowanie jego trwałości i skutków

Mołdawia to podręcznikowy przypadek państwa zawłaszczonego. Określenie to stało się synonimem wielu krajów postsowieckich. Zawłaszczenie państwa w Mołdawii było wynikiem podążania po 1991 r. ścieżką częściowych reform, która umożliwiła powstanie klasy oligarchów zdolnych do przejmowania kluczowych funkcji państwa i wypaczenia otoczenia biznesowego ze szkodą dla dobra publicznego. Przypadek Mołdawii jest znamieny ze względu na ekstremalny stopień zawłaszczenia państwa przez jedną sieć oligarchiczną, ustalającą reguły gry w wymiarach politycznym, gospodarczym i społecznym, a do pewnego stopnia także w polityce zagranicznej. Powstało zatem błędne koło hamujące rozwój Mołdawii, pogłębiające biedę i drenowanie państwa poprzez masową migrację. Rok 2021 daje perspektywę do rozważań, czy Mołdawia może odwrócić sytuację poprzez realizację programu reform antykorupcyjnych przedstawionego przez prezydent Maię Sandu, czy jednak perspektywie zmian zagrażają utrwalone partykularne interesy podmiotów, które uporczywie chcą utrzymać *status quo*. Przyszła pomoc dla Mołdawii zależy od poprawy sytuacji społeczno-gospodarczej i warunków życia ludzi, a także od skutecznego ścigania osób odpowiedzialnych za akty korupcji i defraudacji. Poza tym reformy powinny się skupiać na poprawie otoczenia biznesowego, wzmacnianiu pozycji kobiet i dostarczaniu rozwiązań mających na celu powstrzymanie migracji z kraju.

Introduction*

This article examines the notion of state capture, a concept synonymous with the politics of a number of Eastern European countries. The overall aim of the paper is to offer explanations about why state capture has persisted some thirty years after the end of communism and the onset of market reforms in the post-Soviet space with reference to the Republic of Moldova. The prevalence of state capture, which was first coined in a series of World Bank / European Bank of Reconstruction and Development (EBRD) studies in 2000, still goes a long way to help understand and explain the incompleteness of post-Soviet transitions, uneven economic growth and social fault lines that persist across the region and, in particular, the stunted nature of political pluralism, weak governance and inequalities.¹ State capture differs from normal definitions and understandings of oligarchy since it implies the capacity of the very few to subvert the rule of law and to shape and even create the rules of the game. Crucially, state capture is a condition, a cause and an effect.

State capture is a legacy of the USSR's collapse and, specifically, the ways in which power and ownership were appropriated in the early 1990s which saw the rise of oligarchs and the embedding of oligarchic economies.² In certain former Soviet states, this unfolded into state capture where insufficient attention was paid to establishing good governance and robust public institutions. This partial reform came around, according to Joel S. Hellman, because the early winners of transitions who gained disproportionately from the initial freeing-up of the market had vested interests in holding back further and fuller reforms which could have enhanced the public good and

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- 1 J. S. Hellman, G. Jones, D. Kaufmann, „*Seize the state, seize the day*”. *State capture, corruption, and influence in transition*, World Bank, Washington, DC 2000 (Policy Research Working Paper, 2444): <<https://openknowledge.worldbank.org/handle/10986/19784>> [accessed: 12 V 2021]; *Anticorruption in transition. A contribution to the policy debate*, World Bank, Washington, DC 2000: <<https://documents1.worldbank.org/curated/en/825161468029662026/pdf/multi-page.pdf>> [accessed: 10 II 2018].
- 2 Ch. Freeland, *Sale of the century. The inside story of the second Russian revolution*, Abacus, 2005.

rendered transitions more equitable.³ The consequences of partial reforms were particularly striking in Azerbaijan and Moldova, which, as small states, had fewer oligarchs and therefore a smaller number of veto players trying to shape the new rules of the game to their own advantage.

This article posits that state capture is a structural distortion, which obviates against a sustainable transition towards a functioning liberal market economy, a business environment with adequate regulations and strong public institutions and policies adhering to and promoting the rule of law. Structural distortions caused by state capture also entail social costs by reinforcing inequalities and weakening civil society.⁴ The case of Moldova demonstrates all these aspects and has been analysed as such in recent studies. The notable works by Theodor Tudoroiu and by Ion Mandarici, for example, have made substantial empirical and conceptual contributions to understanding Moldova and the ways in which it became a captured state.⁵ Amongst other factors, these authors concurred that the emergence of state capture implied the exploitation of the routine functions of the state and warping of public institutions, which in turn derailed societal development and the chances for democratisation to take root. The current article seeks to build upon existing research to further the debate on Moldova and to fill in some of the gaps apparent in current scholarship. Accordingly, the paper will update the state of the art by considering recent developments in Moldova and will pose the compelling question as to whether the country can be effectively de-captured. In addition, attention will be drawn to the vicious circle of Moldova's mal-development and persistent deleterious socio-economic effects.

3 J. S. Hellman, *Winner takes all: the politics of partial reform in postcommunist transitions*, „World Politics” 1998, vol. 50, issue 2, p. 203–234.

4 The term *structural distortion* is used in medicine and implies a situation when elements of a human body's spine or frame move away from what should be its normal configuration or setting, with consequent wider effects on the body's nervous system and general functioning. See also: J. Lapalombara, *Structural and institutional aspects of corruption*, „Social Research” 1994, vol. 61, No. 2, p. 325–350: <<http://www.jstor.org/stable/40971035>> [accessed: 12 V 2021].

5 Th. Tudoroiu, *Democracy and state capture in Moldova*, „Democratization” 2015, vol. 22, issue 4; I. Mandarici, *Taming the oligarchs? Democratization and state capture: the case of Moldova*, „Demokratizatsiya. The journal of post-Soviet democratization” 2021, vol. 29, No. 1, p. 63–90.

This article posits that Moldova is a text book-plus example of a captured state. Whilst the economy opened up, and salaries rose for some, GDP in the 1990s tumbled, growth was patchy and also vulnerable to internal and external shocks, which continue to challenge basic societal resilience.⁶ The effects of state capture in Moldova also continue to have regional and international effects. The *de facto* statehood of the breakaway Transnistria region is sustained, in part, by vested interests amongst some actors in Moldova and Transnistria, which help to nourish the *status quo*.⁷ Meanwhile, the persistence of state capture led to fissures in Moldova's relations with international organisations, including the European Union (EU), World Bank and International Monetary Fund, which led to the freezing of financial and economic support and cooperation in 2015 and again in 2017–2018 in response to finance scandals, electoral corruption and democratic backsliding.

This article also reflects on the new political era that began, albeit on what transpired to be an un-firm footing, in 2019 when two seemingly opposing forces (the pro-Russian Party of Socialists and the ACUM pro-European coalition – led by Maia Sandu) formed a coalition to overcome the oligarchic regime created by the Democratic Party of Moldova (PDM) under the stewardship of oligarch in chief Vladimir Plahotniuc.⁸ In December 2020, Maia Sandu was voted president on the back of an anti-corruption platform and, more specifically, a pledge to confront state

6 K. Longhurst, M. Mogildea, *Leveraging resilience? Implications of the EU global strategy for the Republic of Moldova*, [in:] V. Cucerescu et al., *The European Union and the Eastern Partnership – security challenges*, ECSA Moldova, Chişinău–Cernăuţi–Tbilisi 2018.

7 Author's interviews with think tanks, Chisinau, Moldova, June 2018.

8 Vladimir Plahotniuc identifies as a politician, businessman and philanthropist. His estimated personal wealth is 3 billion USD. Before his formal entry into national politics, he established the Moldovan Business People Association, which provided a lever enabling him to gain legitimacy and international recognition and credibility. He has a high profile in the media ownership, banking, energy and real estate sectors. He was chairman of the Democratic Party of Moldova (PDM) between 2016 and June 2019 and was previously a member of parliament in three separate terms. He was also First Deputy Speaker of Parliament between December 2010 and February 2013. Plahotniuc set up the Edelweiss Foundation, the objective of which was to „create equal opportunities for the talented and socially vulnerable people of Moldova”.

capture, improve societal prosperity and create a good life at home,⁹ not least through the proper use of public funds.¹⁰

From the current vantage point, Moldova is a useful lens through which to understand how oligarchy transforms into full-blown state capture and, subsequently, to consider if and how it can be reversed. The following questions guide the article: What does state capture imply and why and how does it come about? Who are the actors involved and what factors enable state capture? Why has state capture proved to be so persistent and what are its effects and consequences? Finally, what remedies can be used to address state capture?

1. Unpacking the notion of state capture

State capture implies something qualitatively different to a standard oligarchic system where multiple oligarchs exist and compete. State capture occurs when a single oligarchic network seizes control of state functions. It also differs from administrative corruption in that state capture involves gaining full influence over institution making and reforms, whereas the former involves alterations to institutional arrangements. At its core, state capture implies that the private business and commercial interests of the few (the captors) gain access to political power and state machinery in such far-reaching and fundamental ways that they can influence, if not determine, governmental decisions, regulations and policy outcomes contrary to the public good.

Capturing the normal functions of the state, notably the judiciary, legislative, and executive, as well as the public administration, tends to emerge over time through a mix of illicit, but also observable, power grabs. Another way of understanding state capture is by reference to the act of rent seeking, a concept used to describe the ways in which entities, whether they be

9 *Inauguration speech of the President of the Republic of Moldova, Maia Sandu*, „Presidency of the Republic of Moldova” [online], 24 XII 2020 [accessed: 12 V 2021]: <<https://www.presedinte.md/eng/presa/discursul-inaugural-al-presedin-telui-republicii-moldova-maia-sandu-92799>>.

10 M. Necsutu, *Moldova’s pro-European presidential hopeful vows to root out corruption*, „Balkan Insight” [online], 20 VIII 2020 [accessed: 12 V 2021]: <<https://balkaninsight.com/2020/08/20/moldovas-pro-european-presidential-hopeful-vows-to-root-out-corruption/>>.

individuals, firms or organisations, attempt to gain wealth without actually making an equivalent contribution to productivity or output. Rent seeking is not uncommon, but in uncertain or badly regulated economies and especially when enforcement measures against corruption are feeble, its consequences can be substantial. Crucially, in the context of post-Communist states such as Moldova, rent seeking became prolific because the associated costs and risks involved were low and the benefits and profits high.¹¹ It follows, therefore, that states undergoing protracted transitions are prone to becoming captured by minority interests due to the absence of robust checks and balances and because it is relatively un-risky to act corruptly.

The World Bank / EBRD studies of 2000 presented that while states such as Poland and the Czech Republic were on route to establishing stable business environments characterised by low corruption and underpinned by the rule of law and political pluralism, Moldova, Azerbaijan and Ukraine had become highly captured as an outcome of their specific post-Communist trajectories, which led to the emergence of a vicious circle of oligarchs, non-transparent privatisations and perpetually weak public institutions. Crucially, this demonstrates the effects of partial reforms; meaning that though their economies were swiftly liberalised and state enterprises sold off after 1991, the political reforms needed to induce good governance and a business environment nestled in regulatory frameworks and the rule of law were largely side-stepped leading to early winners seizing, consolidating and then grabbing more and more power and influence.¹²

2. Honing in on Moldova as a captured state

How do elements of a state's essential machinery become captured? State capture assumes that in order to shape the rules of the game to your advantage, control needs to be acquired over the judicial, legislative and executive sectors, plus the regulatory agencies, core ministries and public administrations at central and local government levels. Thus, effective capturing needs to have horizontal and vertical dimensions. This requires wealth and a network of likeminded individuals, kin and loyal groups with mutual interests.

11 Author's interviews with officials from international organisations and business associations in Chisinau, Moldova, June 2019.

12 J. S. Hellman, *Winner...*, p. 203–234; Ch. Freeland, *Sale...*

It also assumes access to communication channels and media outlets to control narratives to cover the capturing and to deflect blame onto competitors. The prerequisite of reaching state capture is assembling a government subjected to the influence of oligarchic networks.¹³ This can be described as the tipping point from an oligarchic regime to one typified by state capture.

The example of Moldova aptly shows how state capture by oligarchic networks comes about through concrete steps involving a mix of legitimate, semi-legal and illicit actions, some of which will be in plain sight, and all backed by manufacturing a favourable geopolitical affiliation to create an illusion of legitimacy.¹⁴ Taking control over state institutions comes first. Next, the bribing and blackmailing of members of parliament as a means of buying votes to determine favourable laws. Concomitantly, lower-ranking civil servants and public officials can receive a pass to engage in rent-seeking activities involving public funds, such as in the area of public procurement. In return, they are expected to sustain a regulatory environment useful for the captors. Similarly, certain judges and legal officials will be protected from charges of corruption so that they can bring about legal outcomes conducive to the captor's objective of encoding „advantages for themselves into the basic rules of the game”.¹⁵

The example of Moldova also shows how the successful capturing of a state comes about when a captor becomes a veto player, implying that they hold optimal power and the capacity to change the *status quo* (or not) according to their own interests. As argued by Tanya Bagashka, the fewer the number of veto players in a transition state, the more likely it is to become captured.¹⁶ The text book-plus case of Moldova illustrates how

13 D. Cenușa, *Oligarchic regimes in Moldova and Georgia, two different approaches from EU*, „IPN Press Agency” [online], 31 VII 2018 [accessed: 12 V 2021]: <<https://www.ipn.md/en/integrare-europeana/92665#>>.

14 Idem, *Moldova, between protests and „state capture”*, Barcelona Centre for International Affairs, March 2016 (Opini3n, 391): <[https://www.cidob.org/en/publications/publication_series/opinion/europa/moldova_between_protests_and_state_capture/\(language\)/eng-US](https://www.cidob.org/en/publications/publication_series/opinion/europa/moldova_between_protests_and_state_capture/(language)/eng-US)> [accessed: 12 V 2021].

15 J. S. Hellman, G. Jones, D. Kaufmann, „Seize...”, p. 7; L. E. Sitorus, *State capture – is it a crime? How the world perceived it*, „Indonesia Law Review” 2011, vol. 2, No. 1, p. 47.

16 See T. Bagashka, *Unpacking corruption: the effect of veto players on state capture and bureaucratic corruption*, „Political Research Quarterly” 2014, vol. 67, No. 1, p. 165–180: <<http://www.jstor.org/stable/23612043>> [accessed: 16 II 2021].

a very small number of veto players were able to chip away at the integrity of the state without substantial resistance.

Though it gained its sovereignty in 1991, Moldova gradually became captured over the course of the following 30 years. Oligarchic networks emerged in the 1990s, but it was arguably only in the late 2000s, during the demise of Vladimir Voronin's autocratic rule, that the seeds of state capture started to grow and were subsequently harvested in 2016 when the wealthy oligarch Vladimir Plahotniuc emerged as the core veto player, using the PDM as a vehicle to capture other elements of the state. Though holding no government office, Plahotniuc managed to „stack government structures with either his cronies or individuals too weak to threaten his operations”.¹⁷

2.1. Capturing a political party as a precursor to capturing parliament

In November 2010, Vladimir Plahotniuc became the vice-chairman of the PDM and by December had become deputy chairman of the Moldovan parliament. Though the PDM was not a popular party and remained marginal in terms of its size in parliament, it became an effective vehicle for capturing parliament from the inside out. The strength of the PDM, which was essentially a front for oligarchic businesses, was enhanced through the migration of MPs from other parties who defected in substantial numbers in 2014 to swell the PDM's parliamentary ranks. The fact that the PDM was the only beneficiary of the migration pointed to blackmail and bribery being at play.¹⁸ The mass migration (around one-third of parliamentarians switched to the PDM) resulted in a parliament that did not represent the actual outcome of the elections of 2014. In other words, Moldova's legislature had become captured.

2.2. Shaping the rules of the game

State capture was consolidated further by changes brought to the country's electoral system in 2017 on the back of the PDM's proposal to create a single member district or first past the post system. A mixed system was

17 S. Chayes, *The structure of corruption: a systemic analysis using Eurasian examples*, „Carnegie Endowment for International Peace” [online], 30 VI 2016 [accessed: 12 V 2021]: <<https://carnegieendowment.org/2016/06/30/structure-of-corruption-systemic-analysis-using-eurasian-cases-pub-63991>>.

18 Author's interviews with think tanks, Chisinau, Moldova, December 2018.

eventually introduced by an opaque compromise between the Socialist Party and the PDM, but nevertheless, the changes to the electoral process represented a substantial power grab and enabled the PDM to change the rules of the game to its own advantage. In effect, Plahotniuc was able to fiddle the playing field, shape the rules and, in so doing, elevate the popularity of his party through a rigged system. All of this was carried out in the face of condemnation by the Venice Commission, which saw fundamental flaws in the proposed new system as well as in the processes through which it was pushed through. The Venice Commission saw that „the proposed reform could potentially have a negative effect at the constituency level, where independent majoritarian candidates may develop links with or be influenced by businesspeople or other actors who follow their own separate interests”. The report also pointed out that the proposed new law „does not address earlier recommendations and concerns pertaining to the regulation and oversight of political party and campaign finance”.¹⁹

The strident pace of state capture in Moldova continued in 2018. The election for the mayor of Chisinau, which was won by Andrei Năstase, an anti-corruption candidate, was annulled by the decision of a city court and subsequently upheld by the Supreme Court. The official reason for the annulment was that candidates had engaged in online campaigning on the day of the election. However, what the annulment actually confirmed was that the PDM effectively and decisively controlled substantial elements of the judiciary and had gained the capacity to effectively exercise control over elections through aligning the rules of the game to the advantage of the party. Had Năstase become mayor, his anti-corruption agenda would have certainly scrutinised Plahotniuc’s business interests and property empire. The annulment of the mayoral election prompted strong reactions and condemnation domestically and internationally in ways that had hitherto not been felt. As a result, the EU suspended its considerable

19 R. Barrett et al., *Republic of Moldova joint opinion on the draft laws on amending and completing certain legislative acts (electoral system for the election of the parliament)*. Adopted by the Council for Democratic Elections at its 59th meeting (Venice, 15 June 2017) and by the Venice Commission, European Commission for Democracy through Law (Venice Commission), OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), Strasbourg–Warsaw 19 VI 2017 (Venice Commission Opinion, 884/2017, ODIHR Opinion, ELE-MDA/308/2017): <[https://www.venice.coe.int/web-forms/documents/default.aspx?pdffile=CDL-AD\(2017\)012-e](https://www.venice.coe.int/web-forms/documents/default.aspx?pdffile=CDL-AD(2017)012-e)> [accessed: 12 V 2021].

macroeconomic assistance to Moldova and pointed to its condition as a captured state. The annulment also prompted the EU to enhance its support for civil society and other non-state stakeholders.²⁰

The PDM and its wider network was able to shape the rules of the game in increasingly more decisive ways when Plahotniuc's veto power was strengthened by diminishing competition. This occurred in the wake of the conviction of one of his main rivals in 2016, namely former Prime Minister Vladimir Filat, for his part in a number of corruption scandals.

Being a stronger veto player in the context of weak public institutions and the lack of effective political pluralism and competition smoothed the way for informality and cronyism to persist as part of the rules of the game. An illustration of this was the opaque collaboration between Igor Dodon, Moldova's president 2016–2020, and Vladimir Plahotniuc. Officially ideological adversaries (Dodon represented the Left and was pro-Russian), commentators point to an implicit understanding between the two and a proclivity on both sides to avoid public confrontation. For example, in the late 2000s, Dodon would have been in a position to facilitate Plahotniuc's acquisition of state-owned companies and remained taciturn when Plahotniuc secured appointments for his associates in the judicial and law enforcement sectors.²¹

2.3. Capturing the judiciary and controlling anti-corruption measures

Attempts at reforming the judiciary in Moldova have been a constant feature over the past twenty years but consistently fell short of bringing about sustainable change. This can be explained by the fact that over the same time frame equal effort was being placed into subverting justice and attacking anti-corruption measures by those with vested interests in keeping the rule of law at bay. Political interference rendered institutions weak and the application of the rule of law patchy which became part of the vicious circle created by and sustained by state capture.

20 Author's interviews with officials from international organisations, Chisinau, Moldova, June 2019.

21 V. Socor, *Igor Dodon, Moldova's strawman dictator (part one)*, „Eurasia Daily Monitor” 2020, vol. 17, issue 96: <<https://jamestown.org/program/igor-dodon-moldovas-strawman-dictator-part-one/>> [accessed: 12 V 2021].

Enduring deficiencies in judicial reform and ineffective anti-corruption institutions are further manifestations of Moldova's post-1991 partial reform, which, as noted earlier, saw market liberalisation occur without the accompanying reforms to establish regulatory frameworks and sound public institutions to implement the rule of law. This allowed politics to influence anti-corruption bodies and the justice system more broadly, the eventual capture of which meant that cases and convictions were selective and closely aligned with prevailing political interests.

By 2013, Plahotniuc and the PDM had started to gain control of the judicial branch, including the office of the public prosecutor and the Constitutional Court. The capturing of the sector became more direct after 2016 when the Ministry of Justice, Ministry of Internal Affairs and Legal Parliamentary Committee were taken over by the PDM. Control was assured chiefly by appointing PDM-friendly officials and Plahotniuc loyalists or simply officials open to bribery. A study compiled by Transparency International concluded that on critical issues to do with choices of judges on the Superior Council of Magistracy (SCM) „the selective approach regarding appointments and promotions suggests that the SCM and the Parliament promotes loyalty over merit”²²

Another pertinent example of the capture of Moldova in the legislative area relates to anti-corruption. In this sphere there was both purposeful neglect of necessary and outstanding reforms and also political instrumentalisation of newly created institutions. Consequently, Moldova was slow to create effective national bodies to safeguard against corruption, slow to create enforcement measures and then negligent in their implementation.

Weak public institutions and a slow start enabled politics to take over and, in effect, the anti-corruption sector became itself corrupt. The capturing of the anti-corruption sector was achieved through selective appointments and the discriminate and politically motivated filing of cases against political opponents and economic competitors. Furthermore, the government actively stalled anti-corruption efforts by silencing civic activists and NGOs, suppressing lawyers and using personal data protection laws to impede access to information relevant to the public interest.

22 *State capture: the case of Moldova*, Transparency International, Chisinau 2017: <http://www.transparency.md/wp-content/uploads/2017/06/TI_Moldova_State_Capture.pdf> [accessed: 12 V 2021].

2.4. Capturing diplomacy and image

Aside from the political, economic and social manifestations and effects of state capture a further dimension emerged which reinforced Plahotniuc's personal role as chief captor. Plahotniuc pursued a strategy to cultivate an image for himself abroad as a credible statesman, despite neither holding public office nor a diplomatic mandate at that time. In doing this, he captured the image of the country abroad, which also helped him keep power at home and evade sanctions, at least until 2019. This fits with the core ideas of state capture since by strengthening his position and visibility abroad as a leader, his position and interests at home were also ensured. By playing the role of pro-Western politician, Plahotniuc used PDM-related diplomats and his official visit to the US to present himself as a reliable bulwark against Russian interference in Moldova.

3. Identifying the effects of state capture

It is notoriously difficult to measure the effects of state capture and corruption given its illicit nature. Nevertheless, the following discussion highlights some of the most important structural distortions that were brought about by state capture in Moldova.

To get an authentic and nuanced picture of state capture's effects requires reference to not only the immediate costs incurred by the public purse, but also recognition of wider welfare costs. Measures of perceptions of corruption by stakeholders is also a salient indicator, since how corruption is viewed and its effects anticipated will affect the choices made and the decisions taken.

As stated earlier, state capture persists within a vicious circle and is buttressed by weak state institutions, which effectively enable oligarchs to pursue their interests to the detriment of the wellbeing of society at large. In transition states, such as Moldova, this creates a fundamental problem since it is not possible to advance the necessary structural reforms to help society if the state itself is incapacitated and unable to evolve into a viable anchor and stakeholder in the transition process. As a consequence, state capture harms the provision of public goods by rendering them excludable and rivalrous. For example, the politicised appointment of senior officials, the use of informality, arbitrary rulings, routine bribery and favouritism affect the extent

to which the rule of law and protections provided by law enforcement agencies, for example, are available to all citizens equally and fairly. Based on these assumptions and by using a variety of indicators and examples, the following sections aim to pinpoint some of the real effects of state capture in Moldova.

3.1. Corruption, ineffective governance and social costs

The World Bank's Worldwide Governance Indicators (WGI) present an aggregate picture of the quality of governance.²³ Whilst Moldova improved on the indicator of voice and accountability, meaning the perceptions of how far citizens are able to participate in civic life and the political process, from the 37th percentile in 2009 to the 43rd in 2019, it barely budged on the issue of government effectiveness; from the 36th percentile in 2009 to the 37th in 2019. This contrasts sharply with Georgia, for example, which, during the same period, moved upwards from the 64th percentile to the 76th.

A noticeable though not huge improvement occurred between 2009 and 2019 for the perception of regulatory quality, implying the ability of the government to create a viable environment for private business. On this indicator Moldova moved from the 49th percentile in 2009 to the 56th in 2019. Though again this contrasts with Georgia's elevation from the 66th percentile in 2009 to the 83rd in 2019. On the rule of law indicator, which is concerned with how well the law is seen as being implemented, as well as the quality of the judicial system and law enforcement agencies, Moldova's score remained virtually the same at around the 41st percentile, though in 2014 it did rise to the 46th. Finally, on the question of how the government was doing on controlling corruption, the change in Moldova was quite small; from the 27th percentile in 2009 to the 30th in 2019. Again, this contrasts with Georgia's score, which rose from the 55th percentile in 2009 to the 74th in 2019.

The findings from the WGI suggest a sluggish rate of change on virtually all governance indicators in Moldova but, in particular, those that are the most indicative of the presence of state capture, namely government effectiveness, the rule of law and control of corruption.

Costs incurred by corruption are diverse, as already noted. Not only are there direct financial costs to the public purse, but there are also

23 „Worldwide Governance Indicators” [online, accessed: 12 V 2021]: <<http://infoworldbank.org/governance/wgi/>>.

a host of costs that spill over into welfare and, thus, the long-term development of a country. A study in 2017 by the Moldovan think tank Expert-Grup found that the costs to the Moldovan state resulting from corruption amounted to around 8.7% of annual GDP (11.8 billion Moldovan lei). Furthermore, the annual direct losses caused by bribes, it was calculated, accounted for 3–5% of the national public budget. To compare this with welfare costs, this loss was roughly equal to at least 22% of the country's entire annual pension payments.²⁴

By definition, state capture makes it harder for governments to implement effective public policies to alleviate poverty. Thus, it follows that state capture and corruption beget poverty and reinforce inequalities. The case of Moldova on first inspection, however, seems to challenge this hypothesis.

Moldova has had significant success at reducing poverty and met the targets set out in the „Moldova 2020” National Development Strategy. According to national statistics from 2019, 25.7% of the population lives below the national line of absolute poverty and 10.7% in extreme poverty. Thus, an overall fall in absolute poverty over time (2014 – 29.5%, 2015 – 25.4%, 2016 – 26.4%, 2017 – 27.7%, 2018 – 23%) is discernible, albeit with notable blips.²⁵ Evidence also suggests that over the previous decade it was the poorest 10% of the population that experienced the steepest rise in income, compared to the top 10% earners.²⁶ Moldova also appears to have significantly reduced inequalities according to its GINI score (25.7 in 2018 from 37 in 2006).²⁷ These palpable achievements notwithstanding, further clarification is needed.

24 D. Budianschi, *The cost of corruption in the Republic of Moldova and who covers it*, „Expert-Grup” [online], 21 XI 2017 [accessed: 12 V 2021]: <www.expert-grup.org/en/biblioteca/item/1526-costul-coruptiei-in-republica-moldova-si-cine-il-suporta>.

25 *The level of poverty in the Republic of Moldova in 2019*, „National Bureau of Statistics of the Republic of Moldova” [online], 31 XII 2020 [accessed: 12 V 2021]: <<https://statistica.gov.md/newsview.php?l=en&idc=168&id=6865>>.

26 *Unequal Moldova. Analysis of the most relevant inequalities in The Republic of Moldova*, East Europe Foundation, Partnership Center for Development, [2019]: <https://eef.md/media/files/files/unequal-moldova-report-english-web_1278956.pdf> [accessed: 12 V 2021].

27 *Gini index (World Bank estimate) – Moldova*, „The World Bank” [online, accessed: 12 V 2021]: <<https://data.worldbank.org/indicator/SI.POV.GINI?contextual=region&locations=MD>>.

First, although poverty alleviation has succeeded over the past ten years and household incomes have risen, it remains the case that the more vulnerable elements of society, including rural communities, the aged, as well as women, are still more likely to be in poverty.

Second, the relative decline in poverty has come about not just as a result of improved public policies and support from international donors, but is also actually a result of one of the other effects of state capture. As will be discussed below, the exodus-like scale of outwards migration of working-age Moldovans hollows out the state, but also results in large-scale remittances being sent back to households, which became a strong factor in poverty reduction. A 2018 study by Expert-Grup found that if remittances were taken out of the equation the effects of state capture on perpetuating inequalities in Moldova would have been more apparent.²⁸ To put the scale of this into clearer perspective, at the highest points, remittances were worth around 34% of Moldova's GDP and, as such, became a direct and necessary lifeline for thousands of households.²⁹

Third, national measures of income inequality and the GINI index are unlikely to include data on the income and wealth of the very rich, and especially oligarchs with illicitly generated income stored in overseas deposits or laundered through illicit activities.

The social costs of state capture and the subsequent distorting effects upon the economy and society are, as noted above, manifest in the large-scale outwards migration of people looking for better opportunities in the EU or Russia. Though through remittances this has acted as a remedy for poverty alleviation at home, it also reinforces the vicious circle of state capture by affecting the viability and resilience of the country. The population of Moldova has been steadily depleting since 1991 and since 2014 has topped by over 220,000; from 2,869,226 in 2014 to 2,640,438 in 2020.³⁰

28 I. Morcotilo, *Social inequality – what is the role of corruption?*, „Expert-Grup” [online], 8 VIII 2018 [accessed: 12 V 2021]: <<https://www.expert-grup.org/en/biblioteca/item/1667-inechitatea-sociala-care-este-rolul-coruptiei&category=180>>.

29 *Republic of Moldova. Key migration statistics*, „Migration Data Portal” [online, accessed: 12 V 2021]: <https://migrationdataportal.org/data?i=remit_re_excel&t=2019&cm49=498>.

30 *Usual resident population by ages and sex, as of January 1, 2014–2020*, „National Bureau of Statistics” [online, accessed: 12 V 2021]: <<https://statbank.statistica.md/PxWeb/pxweb/en/20%20Populatia%20si%20procesele%20demografice/20%20>

It is difficult to find out how many Moldovans live and work abroad (on the basis of holding a Romanian passport if they are in the EU) with estimates of between 800,000 and 2 million. But whatever the actual number is, the most significant fact is that the majority of emigrants leaving Moldova are qualified and of working age, which constitutes a serious brain drain leading to an ageing population and labour shortages at home. There are also wider social costs associated with children being left behind whilst their parents work abroad for lengthy periods of time.³¹ This demographic hollowing out of the state is exacerbated by the fact that over time fewer remittances are being sent back home, which, in accordance with the argument made above, poses a challenge to Moldova's attempts at keeping poverty at bay. The change in remittance levels is striking; in 2019, the value of remittances stood at 1.96 billion dollars, which was 16.3% of Moldova's GDP compared to 34% of GDP in 2006. A 2020 study carried out by the International Organisation for Migration found that a quarter of households in Moldova were in receipt of remittances and that for half of them remittances made up more than 50% of their disposable income. Furthermore, 23.4% of households, the study found, would be placed below the poverty line if they did not receive remittances.³²

A further symptom of state capture with costly effects stems from the disregard for the rule of law and the politicisation of justice. The Russian Laundromat scandal, which involved around 20 million dollars being laundered via Moldova between 2010 and 2014, did not receive the full attention of the legal system; in fact, the laundering was to a substantial extent facilitated by Moldovan laws. Meanwhile, the theft of 1 billion dollars between 2012 and 2014, equal to 1/8 of Moldova's economy, has yet to result in key individuals facing full justice and incarceration.

Populatia%20si%20procesele%20demografice__POPrec__POP010/POP010200rcl.px/table/tableViewLayout1/?rxid=b2ff27d7-0b96-43c9-934b-42e1a2a9a774>.

- 31 *Society and demography. Eastern Partnership trends*, „Visegrad Insight” [online], 11 III 2020 [accessed: 12 V 2021]: <<https://visegradinsight.eu/eap2030/society-demography-eastern-partnership/>>.
- 32 *IOM rapid field assessment of the impact of COVID-19 on the wellbeing of the Moldovan diaspora: an evidence base regarding migrants' coping strategies and contributions*, International Organization for Migration, The UN Migration Agency, July 2020: <https://moldova.iom.int/sites/moldova/files/documents/IOM%20Diaspora%20Survey%20Report-EN_FINAL_3.pdf> [accessed: 12 V 2021].

3.2. Effects on the business environment

According to the World Bank's Ease of Doing Business index, Moldova has vastly improved; in 2008 it was ranked at 108th place and by 2019 had risen to 48th out of 190 states (the highest place Moldova achieved was 44th in 2016/2017). However, at the same time, perceptions of corruption remain high according to rankings based on qualitative studies and surveys with stakeholders. Transparency International's Corruption Perception Index, for example, shines a light on the sluggish rates of change and that the situation is far from stable. For example, in 2013 Moldova was ranked in 102nd place, but in 2016 it fell to 123rd place and then back to 115th place in 2020.³³ As already mentioned, the perception of corruption is a very important factor and will be a part of a firm's due diligence when deciding to enter a business environment or devote funds and effort to further development.

State capture has palpably mired Moldova's business environment for both local and international companies. Evidence points to how foreign investors have been put off by the spurious obstacles and red tape involved in setting up and developing a business. Consequently, Foreign Direct Investment (FDI) in Moldova remains low especially in comparison to regional peers. According to the OECD, between 1998 and 2018 the percentage of FDI going to Moldova in the context of Eastern Partnership countries as a whole barely changed.³⁴ Low FDI as a result of state capture and its effects has both economic but also social costs through missed opportunities. For example, foreign firms can have a number of effects on the local environment, such as raising local salary levels, improving local regulatory standards, prompting innovation and modernisation and providing employment opportunities for locals that otherwise would not exist. It is arguably the case that state capture in Moldova has repelled FDI, and the absence of FDI has, in effect, enabled state capture to persist. There is also a further strong link to migration, since in the absence of quality employment in Moldova young people opt to leave and work abroad, as described earlier.

33 *Corruption Perceptions Index 2020*, „Transparency International” [online, accessed: 12 V 2021]: <<https://www.transparency.org/en/cpi/2020/index/mda>>.

34 *Investment perspectives in Eastern partner countries*, Organisation for Economic Co-operation and Development, 2020, p. 13: <<http://www.oecd.org/investment/Investment-perspectives-in-Eastern-Partner-countries.pdf>> [accessed: 12 V 2021].

Like most European countries, the business environment in Moldova is dominated by small, medium and micro enterprises (SMEs). Such businesses are vital in transition countries as they act as vehicles for embedding the norms associated with market economies, they democratise the business environment, act as employers, create new production opportunities and boost local ownership of the economy. In essence, a buoyant SME sector should in and of itself be a remedy to counter state capture. Evidence suggests, however, that the SME sector in Moldova is underperforming in terms of its relative contribution to GDP. A number of individual and practical factors can explain this, such as the lack of modern equipment, the struggle to access overseas markets or problems with finding qualified local staff. However, an explanation about the underperformance of SMEs can also be found in the effects of state capture. As in the case of FDI, domestic SMEs will strategise and make decisions based on the costs and benefits, including anticipated corruption-related obstacles (real and perceived), involved in setting up a business and subsequently developing and growing activities.

Insights from the World Bank's Enterprise survey in Moldova highlight the degrees to which firms experience corrupt practices. In the 2019 survey, 11% of businesses consulted said that they had received at least one request for a bribe in the previous year, with a similar number declaring they had been expected to give a gift to secure a government contract (11.5%). 22% stated that they had had to make extra informal payments to secure a construction permit and 12.5% of firms said they had made payments to public officials to get things done. Corruption was viewed as a major constraint by 27.4% of firms and 30.6% said that courts were a major blockage to their activities. This survey also draws attention to the direct effects of state capture upon local businesses, with 34.1% noting that firms operating illegally and in the grey economy represent a major constraint.

Research suggests that under the conditions of state capture SMEs take or feel forced to take one of two paths, neither of which are perfect and each has consequences for the firm, the business environment and society at large.³⁵ The first is that an SME attempts to enter the market as a fully legitimate enterprise replete with a licence and declared earnings and staff.

35 Author's interviews with business associations, Chisinau, Moldova, June 2018.

The challenge with this path is often that the firm faces ongoing and fresh obstacles, which make doing business difficult and it takes so much effort to sort out formal and informal bureaucracy that time for business development and innovation is lost, thus the chances of prospering without access to other interventions might be limited. The second path for SMEs is to operate wholly or partly in the grey economy, which might mean avoiding, to some degree, rent seekers, but it also implies a reduced scope for innovation and less chance to acquire finance for development, not to mention the costs incurred to the state due to the non-payment of taxes and a lack of insurance for staff. Though this is a rather simplistic interpretation of SME behaviour in Moldova, it serves to demonstrate the dilemmas facing entrepreneurs and the palpable distorting effects of state capture upon the local business environment.³⁶

Conclusions: persistence, remedies and breaking the vicious circle

One of the principal goals of this paper was to apprise the emergence and persistence of state capture in Moldova. Generic transition-related factors, alongside factors specific to Moldova form the basis of understanding the country's condition of state capture.

Whilst analysis presented in 2000, based on EBRD and World Bank data on local business environments, suggested that Moldova was already a highly captured state, it is argued here that full capture did not transpire until 2016. Prior to this, Moldova became an extreme oligarchic regime, characterised by a small number of oligarchs who individually captured different elements of the state. This meant that there was still some degree of competition with multiple players so no single oligarchic network could in effect capture all. Concentration of oligarchic power started around 2009 (at the end of Voronin's period of autocratic rule) and crystallised in 2016 when Plahotniuc becoming the main veto player. His domestic veto power was buttressed by the international role he was able to carve for himself, especially in the United States where he was fêted as a pro-western anti-Russian bulwark.

Like most other former Soviet states, Moldova's post-1991 transition was partial, in that those fundamental reforms to do with governance did

36 Author's interviews with local SMEs, Chisinau, Moldova, December 2018, June 2019.

not receive sufficient attention or verification, as discussed earlier. Large-scale donor support from international organisations and the country's association with the EU arguably failed to check the emergence of state capture throughout the 2000s and it was not until instances of massive fraud and corruption of the electoral system came to light that the international community took action and froze financial support. The drift into state capture was perpetuated by the fact that the EU and international donors tended to latch their support onto geopolitical considerations; supporting seemingly pro-European parties (such as the PDM) and governments, without fully verifying their credentials. It is also the case that, despite being recognised as a democracy, there remained a dearth of competitive politics, a cogent opposition and effective civil society in Moldova, which meant, amongst other things, that donors found it difficult to establish interlocutors to engage with and to leverage change.³⁷ This effectively contributed to an enabling environment for state capture.

As the conditions of state capture edged forwards, more and more elements got sucked in at political and bureaucratic levels and, thus, it became less and less likely that politicians and officials would take a stand as the chances of making a successful challenge depleted. Weak public institutions implied weak enforcement measures which, combined with a culture of impunity, further enabled and propagated state capture. Low living standards persisted and, despite the emergence of higher salaries, many Moldovans, especially in rural communities, continued to experience severe hardship. Limited public resources twinned with difficulties, both real and perceived, to do with establishing a legitimate business meant that informal economic transactions tended to prevail, which, buttressed by reliance on remittances, also helped perpetuate the sources and outcomes of state capture.

Having identified some explanations for state capture's persistence, the issue of remedies should be addressed. As argued at the start of this article state capture is a real world problem, affecting people's lives and representing a systemic block to sustainable development and poverty

37 Note that despite there being over 10,000 registered civil society organisations in Moldova, sustainability remains a key problem. The state does not support CSOs financially, and there are no partnerships between CSOs and businesses. *BTI 2020 Country Report - Moldova*, Bertelsmann Stiftung, Gütersloh 2020: <www.bti-project.org/en/reports/country-report-MDA-2020.html> [accessed: 12 V 2021].

alleviation, thus any discussion about state capture should also point to how it might be remedied. This applies to the case of Moldova, but is relevant elsewhere too. The key question is whether state capture in Moldova can be overcome.

The events that occurred over the past two years have seen a palpable change in Moldova's political landscape; the flight of Vladimir Plahotniuc and the election of Maia Sandu as president suggest that the necessary conditions for reform might be in place and also that the country could become more closely aligned with Europe. However, despite a strong mandate and a reform programme backed by western donors, prospects for sustainable change remain conditioned by multiple variables the effects of which are uncertain.

There remains significant inertia vis-à-vis reforms in general amongst elements of the political elite which is twinned with the persistence of vested interests that obviate against change, especially with regards to the justice sector and the rule of law. Equally, ideological differences and East/West geopolitical preferences remain entrenched within the Moldovan political spectrum. Consequently, the potential for domestic political turmoil to stymie socio-economic reforms remains very strong and is already evident in the ongoing (at the time of writing) struggle between Sandu and parliament over the choice of candidate for prime minister. Crucially, this has impeded a snap parliamentary election, which the president was relying on to launch her programme to overcome state capture.

Prospects for mitigating state capture will also depend on how Sandu approaches the Transnistria issue, how far she chooses to push for the departure of munitions from the region and, crucially, how Russia chooses to react. Transnistria's *de facto* statehood is certainly a roadblock to Moldova's reforms, however, there is evidence that pragmatic solutions can be found that, to some degree, can mitigate geopolitics. The best example of this is the way in which the EU's Deep and Comprehensive Free Trade Agreement (DCFTA) came to be applied to the whole of Moldova, including the territory of Transnistria, to the substantial benefit of producers in the region.

Taking these factors on board, what are the crucial ingredients that might improve the prospects of the de-capturing of Moldova? The following points are intended for consideration and as points for reflection on how the vicious circle perpetuated by state capture could be overcome. Three interrelated notions stand out.

First and foremost, a deep and consistent correlation between local, national and international development strategies needs to be achieved. Coupled with this, exacting, yet reachable and verifiable conditionality by international donors is needed as a means of avoiding the problems of the past in Moldova which saw the EU and other organisations backing the wrong horse, namely parties, individuals and NGOs whose pro-western credentials and commitment to concomitant reforms were ultimately revealed as a ruse.

Second, the costs of behaving in a corrupt manner need to be rendered higher and, at the same time, the incentives to act according to the rule of law made palpably more attractive and profitable. This is no mean task given that commerce and economic relations in Moldova tend to rely on informality and trust in public institutions remains low. There is no instant remedy here as trust and social capital only develop gradually and are a delicate phenomenon, especially in transition states. Having said this, there are obvious steps to be taken in the pursuit of building trust, including the full realisation of the prosecution of corrupt officials and, in particular, bringing to justice individuals who perpetrated large-scale thefts from the Moldovan public purse. With regards to confronting corruption in the commercial sector, it should not be assumed that people are not cognisant that corruption is a bad thing, but rather that it is often easier and it became normal to act corruptly since the costs and risks of doing so were perceived as bearable. Equally, the overlay of state capture meant that corrupt practices became a collective phenomenon, i.e. „everyone is doing it so why shouldn't I”³⁸ Remedies here need to address the business environment to level the playing field and enable Moldovan SMEs to invest and develop and, consequently, to become drivers of modernisation whilst contributing to an open economy characterised by production-led growth. To underpin this, business studies and entrepreneurship in schools and colleges should be threaded through curricula to produce the kinds of graduates needed to overcome discrepancies between learning and training and the local job market. Teaching entrepreneurship and innovation and encouraging people to set up their own businesses

38 A. Sundström, *Exploring performance-related pay as an anticorruption tool*, „Studies in Comparative International Development” 2019, vol. 54, p. 1-18, DOI: <<https://doi.org/10.1007/s12116-017-9251-0>> [accessed: 12 V 2021].

could also tie into the objective of stemming mass emigration by nurturing attractive opportunities at home.

Third, gender and equality need to be centre stage of any reform plan, not least because state capture and its effects were often felt disproportionately by women and girls. For example, women are more likely to be in poverty, more exposed to socio-economic changes associated with transitions, in types of work that are either low paid or not paid at all and, as a result, are vulnerable and dependent on partners, extended family and/or the state. The equitable and sustainable development of Moldova has better chances of success, therefore, if female empowerment and gender parity is woven into the fabric of reforms and donor assistance.

Ultimately, the de-capturing of Moldova and the realisation of the types of reforms mentioned above hinge on the palpable socio-economic improvement of people's lives, implying a sense that things are getting better and that there is a better future ahead.

As argued at the start of this article, state capture caused structural distortions to Moldova in ways that were both similar to other transition states but also country-specific which resulted in Moldova becoming a textbook-plus case of state capture. Whilst COVID-19 has shone a sharp light on Moldova's lack of resilience, the current political terrain strongly suggests that there is a window of opportunity to start the necessary processes of de-capturing the state and to realign Moldova away from its structural distortion.

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