



EQUITABLE GROWTH, FINANCE & INSTITUTIONS NOTES

How to Identify Capture and Design Privilege-Resistant Policies

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Background

A number of recent studies have addressed the issue of state business relationships and have demonstrated that economic policies can be undermined in various ways to privilege a few. This has adverse effects at both the economy and sector levels, in terms of less firm entry, higher market concentration, low firm dynamics and productivity, leading to low job creation. This phenomenon is prevalent in several countries and regions of the world.

In 2018, the World Bank published a report on *Privilege-Resistant Policies in the Middle East and North Africa: Measurement and Operational Implications* (Mahmood and Ait Ali Slimane 2018). It proposes an innovative conceptual framework that encapsulates the governance features that could shield policies from capture, discretion, and arbitrary design and enforcement that may create an unlevel playing field for businesses. Based on this framework, a checklist of indicators representing policy features in a wide range of policy areas relevant to private and public sector development was proposed. Notably it encompasses (i) the process of policy making (*ex ante*); (ii) the actual policies, regulations, and their implementation (e.g., business regulations, public procurement, financing, trade and customs); and (iii) competition policy and public accountability mechanisms that help identify and prevent or deter anti-competitive market behavior and outcomes, conflict of interest, and abuses of powers (*ex post*).

The report benchmarks eight countries in the Middle East and North Africa Region along the proposed framework through a checklist of indicators, pointing to policy gaps and poor governance features that make these countries prone to capture and discretion. It offers a menu of operational and technical entry points to engage local policy makers on the capture agenda in a concrete way, one that may be more politically tractable in some of the World Bank's client countries. The report does not provide additional analytical evidence on their impact on private sector growth. It takes the work by the Bank and other development organizations as evidence about the presence of privileges and focuses on the question: What can policy makers do?

This note¹ provides a summary of the framework, methodology, and operational guidelines to help the World Bank's teams apply a benchmarking tool within and across countries. It is intended mostly for analysts and task team leaders from the World Bank or other organizations to assist them in identifying a country's vulnerabilities and its various policy areas in terms of its legal framework and enforcement mechanisms. It also presents ways to leverage the Bank's instruments to address those vulnerabilities and make policies more privilege resistant.

1. Prepared by Meriem Ait Ali Slimane, Senior Economist in the Finance, Competitiveness, and Innovation Global Practice of the World Bank; and Abir Hasan, Consultant and DPhil Candidate at Oxford University.



Conceptual Framework

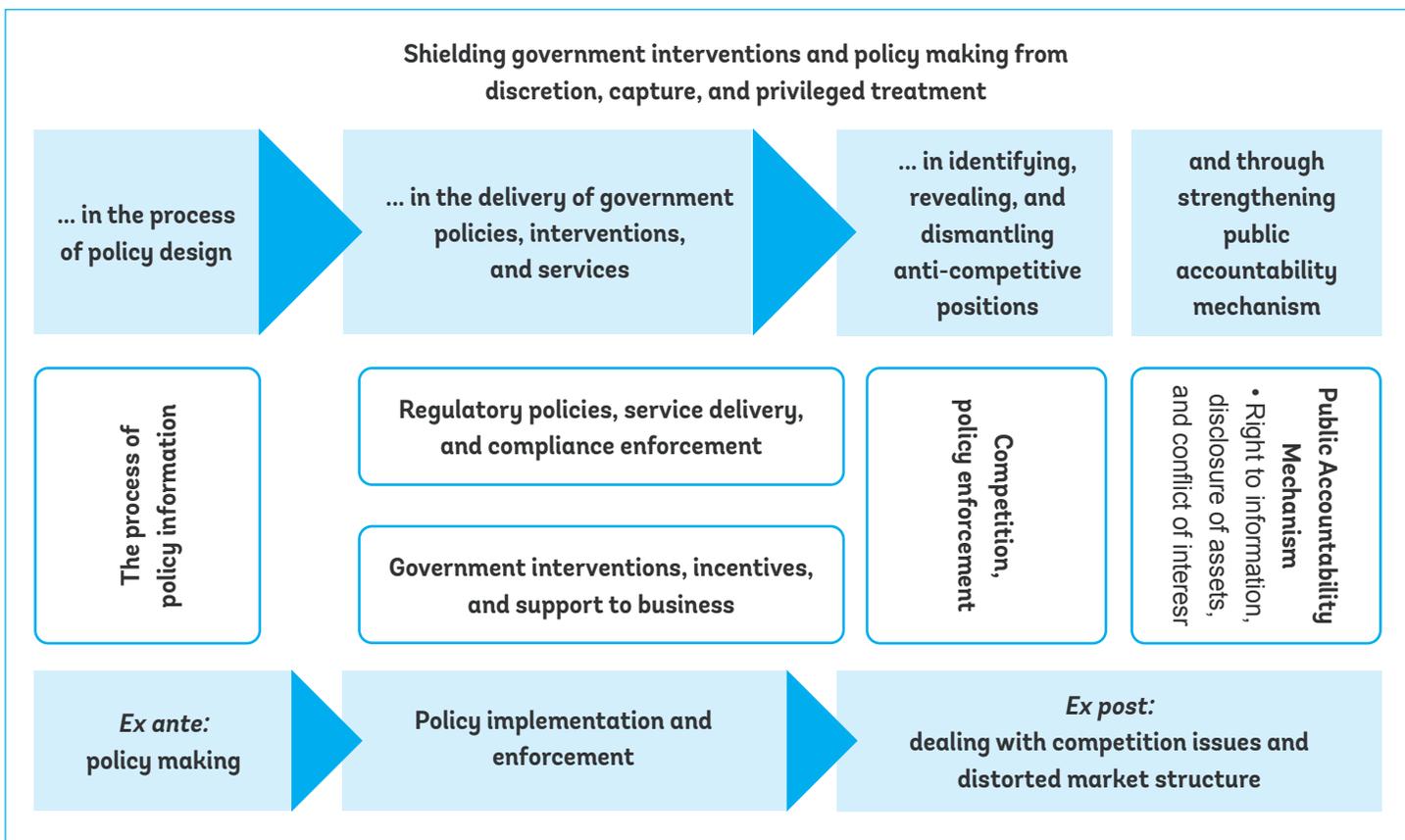
The **privilege-resistant policies report** adapts the conceptual approach of the **World Development Report, Governance and the Law**, to the process of policy making and policy implementation for the private sector (World Bank 2017). In doing so, it puts an emphasis on instituting desirable functions, not insisting on mimicking good practice forms that may have worked well elsewhere. It acknowledges that progress toward less privilege and more fairness is an adaptative process for which each country should find its own entry points and sequencing to level the playing field for the private sector. The proposed working framework captures three dimensions (figure 1):

- **The process of policy formation** (left rectangle), which includes the bargaining between concerned actors for the identification, selection, and adoption of policies; who is included or excluded in this process; and the barriers to entry to the policy arena.

- **The quality of the policies and of their implementation** (middle rectangles), which covers both regulatory policies (e.g., business licensing, permits, sector regulations, trade policy, and customs) and more active policy interventions (e.g., investment incentives, public procurement, and access to land).
- **The set of rules that restrict anti-competitive market behavior and abuses of power** (right rectangles), which includes competition policy frameworks and public accountability mechanisms. The latter restricts conflict of interest and encourages financial disclosure and the right to information, hence creating disincentives to privilege seeking and giving by increasing transparency.



FIGURE 1 - Conceptual framework for analyzing discretion, privilege, and capture



Capture, collusion, exclusion, discretionary treatment, and non-competition in the private sector take place within the process of public policy formation. The impact of these forces is felt in individual policy areas, both in the written policies and regulations as well as in the manner they are implemented in practice. These policies include both (i) regulatory policies, service delivery, and compliance; and (ii) government interventions, incentives, and support to businesses.

Weaknesses in the individual policy areas create opaque and uncontestable markets. These institutional weaknesses can emerge accidentally or can be deliberately introduced by vested interests. It then falls on competition policy to address these deficiencies, enhance the level of competition in various markets, and curb anti-competitive behavior by powerful incumbents. Where the competition policy framework is weak,

deficiencies remain unaddressed. This environment generates a vicious cycle as the persistence of markets that are not contestable increases the power of rent-seeking incumbents and their ability to influence subsequent government decisions.

The other essential dimension in the framework is public accountability mechanisms. In transparent and open governments, citizens can access information about government regulations and decisions, provide oversight, and hold government officials and institutions accountable, making it difficult to create space for deals over rules. The importance of such accountability mechanisms is even higher in countries where the competition framework is poorly designed or weakly enforced. In addition, conflict of interest restrictions and asset disclosure policies for government officials can deter corruption and rent-seeking behavior or at least make them more difficult to undertake.



Measuring Privilege Resistance

Various policies, regulations, and institutions reduce the risk of discretion, unequal treatment, and arbitrariness for private sector firms, such as openness and transparent practices, accountability for results, and the design of regulations and policies that promote citizen engagement

and competition. To measure privilege resistance, the privilege-resistant tool helps to analyze and evaluate the points of interaction between the state and the private sector. Specifically, the report covers the selected policy areas listed in table 1.

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TABLE 1 - Policy areas constituting the principal elements of the framework

POLICY AREA	SUB-POLICY AREA
OVERALL PROCESS OF POLICY FORMATION	<ul style="list-style-type: none"> Citizens' engagement in rulemaking²: <ul style="list-style-type: none"> Notice and comments systems Regulatory impact assessments
REGULATORY POLICY AREAS	<ul style="list-style-type: none"> Customs and trade policy Business regulation
ACTIVE POLICY AREAS	<ul style="list-style-type: none"> Public procurement Allocation of public land Investment incentives Access to finance
COMPETITION POLICY AND PRACTICE	<ul style="list-style-type: none"> Pro-competition/ market contestability institutions and regulations Enforcement of pro competition laws and regulations
PUBLIC ACCOUNTABILITY MECHANISMS	<ul style="list-style-type: none"> Conflict of interest restrictions Financial disclosure Freedom of information

Taken together, these policy areas encompass the principal elements of a framework to shield government regulatory policies from the effectiveness-sapping consequences of administrative discretion and capture by vested interests. Moreover, they are the principal channels or entry points where a set of measurable actions can be identified and taken by policy makers to ultimately strengthen the private sector economic and job growth performance.

2. The indicators and methodology can be found in Johns, Melissa; Saltane, Valentina. 2016. Citizen Engagement in Rulemaking : Evidence on Regulatory Practices in 185 Countries. Policy Research Working Paper No. 7840. World Bank, Washington, DC.

The stock-taking exercise applied to each policy area consisted of two phases:

- **Phase 1:** developing the framework and questionnaires to evaluate the strengths and gaps of the laws and regulatory framework for each policy area studied.
- **Phase 2:** using the questionnaires to collect data from eight countries, specifically Algeria, Egypt, Jordan, Lebanon, Kuwait, Morocco, Oman, and Tunisia. In addition to these data, secondary quantitative data were also used.

The diagnostic methodology developed for benchmarking countries is a critical element of this exercise. The methodology relies on questionnaires to identify policy gaps and legal or regulatory arrangements that make countries prone to capture, discretion, and abuses of powers. The checklists assess the quality, coverage, and complexity of laws and regulations that can help reduce the risk of capture and identify whether they contain privilege-resistant features.

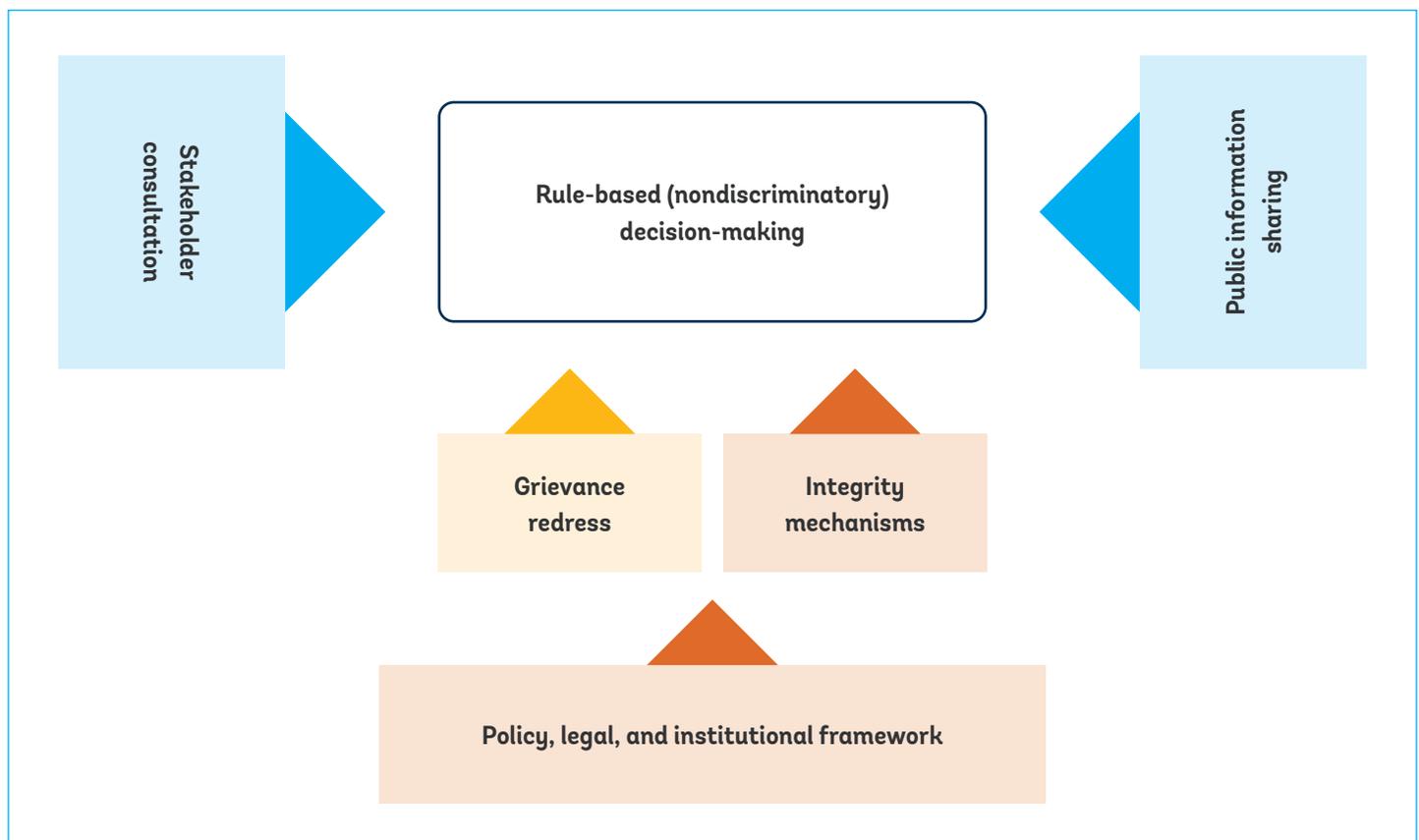
These closed-ended questionnaires ask about the existence and features of specific policies, regulations,

and institutions. The questionnaires cover mostly de jure (laws on paper) and some de facto (the reality of implementation) aspects. They focus on transparency, fair opportunity, access to information, accountability, and integrity. The objective is to identify the breaches for privilege at different levels of interactions between the private sector and the government administration. (See annex A for a sample of a questionnaire.)

To ensure “privilege-resistant” policies, mechanisms that promote rule-based decision-making are critical, including rules that govern the use of discretion. These mechanisms are central and illustrated in figure 2. Two sets of factors strengthen rule-based decision-making by creating accountability mechanisms that can deter and reveal violations of rule-based protocols. They are (i) grievance redress mechanisms and (ii) integrity mechanisms addressing fraud, corruption and abuse of powers. Further reinforcement is enhanced by participatory and transparency arrangements, such as rules and practices for consultation with stakeholders and sharing of information with the public. All these features operate more effectively if underpinned by a strong policy, legal, and institutional framework.

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FIGURE 2 - Privilege-resistant policy features



Systematic Country Assessments

Systematic country assessments, utilizing the framework and questionnaire in different policy areas, can generate country dashboards. The dashboards can help easily visualize and identify policy areas that leave space for privilege, discretion, and arbitrariness and, therefore, require reform in order to level the playing field for the private sector.

For each country, the World Bank team can use the information collected through the questionnaires from country experts and grade the policy areas to their degree of vulnerability to privilege seeking using a traffic-light color scale. Figure 3 shows the results for Jordan.

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FIGURE 3 - An example of a country dashboard of privilege resistance based on a 2015 assessment of Jordan

Public Procurement	●	Citizen Engagement	●
The institutional and regulatory frameworks	●	Transparency of rulemaking	●
Fair opportunity	●	Public consultations	●
Transparency, confidentiality, and access to information	●	Impact assessment	●
Grievance, complaint, and recourse	●	Access to Public Industrial Land	●
Integrity and accountability	●	Institutional and regulatory framework	●
Trade and Customs	●	Transparency, publicity, and scrutiny	●
Tariffs structure and transparency	●	Grievance and recourse	●
Import restrictions and special regimes	●	Enforcement: tax collection	●
Electronic processing of declarations and connectivity	●	Business Regulation	●
Fines	●	Business registration	●
Brokers	●	Permits and licenses: construction permits	●
Customs procedures and ethics	●	Tax inspections	●
Laws and appeals	●	Finance	●
Incentives Policy	●	Related parties and PEPs	●
Legislative framework	●	Corporate governance	●
Consultations	●	Insider trading	●
Administration and governance of incentives	●	Public Accountability Mechanisms	●
Transparency and access to information	●	Access to information	●
		Conflict of interest	●
		Asset disclosure	●
	● Extremely prone to privilege 0 < score < 0.25	● Very prone to privilege 0.25 < score < 0.50	
	● Prone to privilege 0.50 < score < 0.75	● Moderately prone to privilege 0.75 < score < 1	

Source: Mahmood and Ait Ali Slimane 2018.

Note: PEPs = politically exposed persons.

Data Collection

In each country, data are collected from interviews with experts, which can be local consultants or World Bank staff. Their expertise should be in one of the different policy areas covered by the questionnaires (i.e., trade and customs, public procurement, access to public industrial land, access to finance, business regulation, and incentives policy). Using a standard questionnaire, it is important to interview and consult multiple experts in each area to reduce potential bias that could emerge from a single expert's evaluation. Each expert should provide the sources underpinning their responses to the questionnaires. In parallel, the completed questionnaires should be reviewed and the information validated by Bank colleagues with knowledge of the country.

Scoring Methodology

The questionnaires lead to composite scores, which place countries' policy areas in one of the four intervals: moderately, prone, very prone or extremely prone to privilege. No ranking of countries is made. The questionnaires include mostly binary questions that lead to scores of 0 for a negative feature and 1 for a positive feature (e.g., either the law or agency in question exists or not; either there is a publicly available database or not). For each policy area, the composite score is the average of the binary scores obtained for all questions. The composite scores determine the degree of resistance to privilege in a specific policy area for the country under evaluation. To facilitate accessibility to the results, Mahmood and Ait Ali Slimane (2018) introduced

dashboards similar to figure 3. This segmentation is a simplified way to represent countries' performance according to the resistance of their policies to privilege, discretion, and arbitrariness.

Caveats and Limitations

Using questionnaires as an approach aims at covering the essential breaches through which discretion, arbitrariness, and therefore privilege and preferential treatment could occur. By design, the questionnaires are skewed toward the de jure aspect of policies (i.e., laws and regulations) rather than the de facto dimension or their implementation on the ground. Such a focus could provide a rosier picture of the reality of privilege-resistance policies. An additional limitation of this approach is the mixed use of both de facto and de jure questions. A future area of improvement will be to separate these two aspects into two instruments and assess the extent to which policies are well, or fully, implemented on the ground and what are the flaws and gaps so that actionable reform recommendations may be made.

Each question is scored with a 1 or a 0 depending on the existence or not of the specific legal provision or institution under examination. Binary scoring has limitations and gray areas cannot be adequately captured by such scoring. Therefore, the data in the country dashboards are only indicative and can be improved through subsequent rounds of microdata collection or focus group discussions. A mitigation mechanism is the use of intervals (leading to traffic lights) to score policy areas instead of absolute scores.



From Measurement to Action: Operationalizing the Agenda

The usefulness of this approach lies in providing indications of where weaknesses may exist in the policy systems that create scope for privilege seeking and where it may be worthwhile to probe further so that specific operational interventions can be identified.

Operationalizing the Privilege-Resistance Agenda

An operational agenda to help countries make policy making privilege resistant may consist of a diverse set of interventions supported by a range of World Bank instruments. The first step will be to discuss the findings from the benchmarking tool with the government in each country. Discussions may create demand for developing policy ideas and operational support for more in-depth diagnostic and analytic work to probe deeper into the policy areas covered by this tool.

For example, following the implementation of privilege-resistant policies, Jordan developed through World Bank analytical and lending projects a: i) world-class inventory of investment incentives that is publicly available on the e-portal of the Jordan Investment Commission and updated every year; ii) a customer relationship management system to monitor and follow up on staff interaction with firms; and iii) a grievance redress mechanism available on its website.

As the Jordan case illustrates, an initial reform can trigger a cycle of change through a series of ripple effects. By demonstrating the benefits of a reform to agency staff and to risk-averse bureaucrats in other parts of the government, analysis from the privilege-resistant tool can help show that actual risks of carrying out a reform are lower than perceived, potentially reducing bureaucratic resistance to change. The ripple effect of an initial reform may follow different paths. It may be horizontal by triggering similar reforms in other policy areas. For example, introducing rule-based decision-making in allocation of public land may trigger similar reforms in public procurement or business regulations. It may also be vertical by triggering additional reforms in the same policy area. For example, introducing rule-based decision-making in the allocation of public land may be followed by introduction of a grievance mechanism and transparency measures, such as making public data on land allocations.

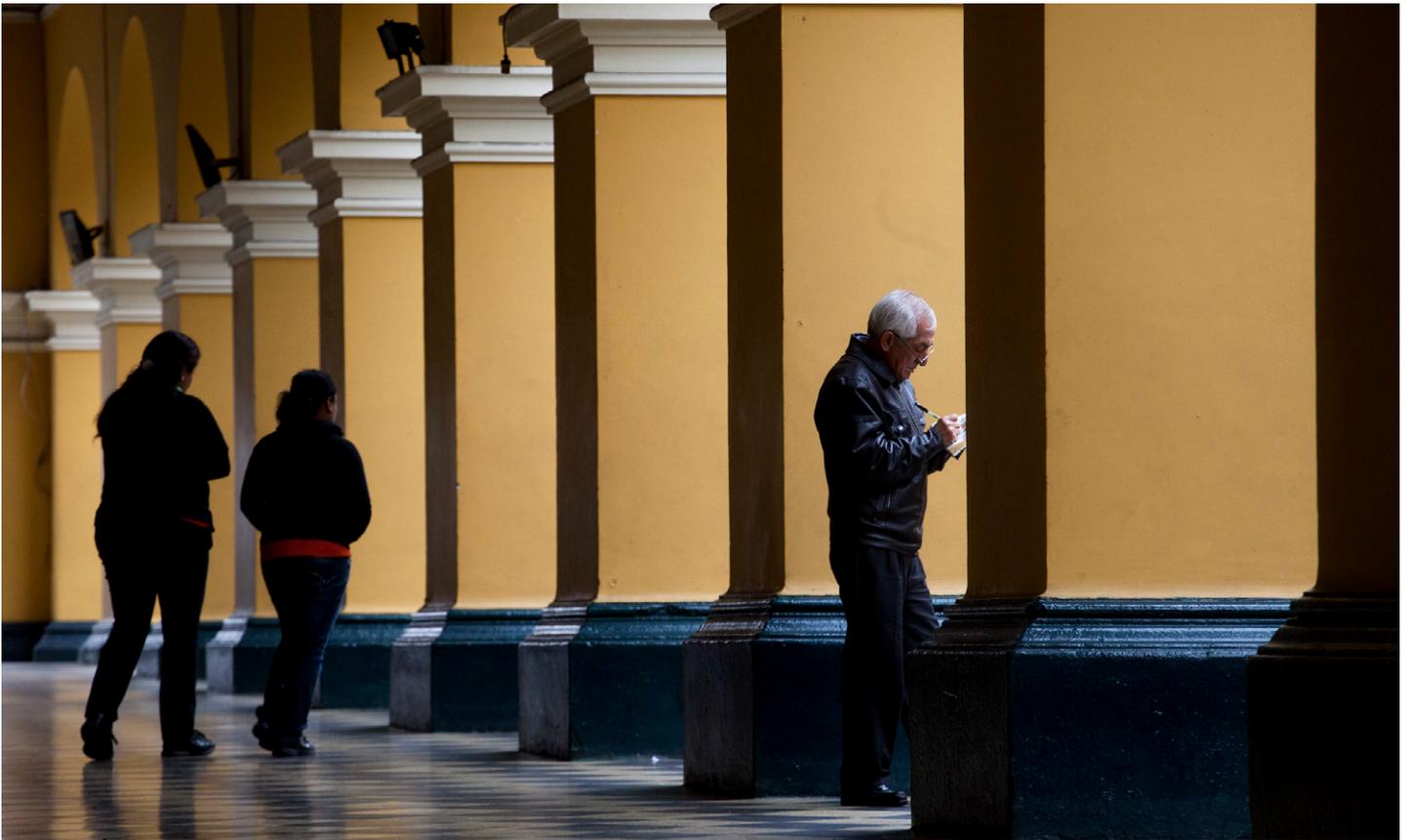
A deeper-dive analytical exercise may begin by taking stock of analytical work already done in the country and identifying areas where further work is needed, including broadening the area of analysis to policy areas not covered by the existing privilege-resistant tool. The more in-depth analysis can help identify areas of intervention, including their packaging and sequencing.

Table 2 provides a summary of the instruments and interventions that Bank staff can consider to reduce the risk of capture and privilege in policy making.

TABLE 2 - World Bank instruments and operational interventions in support of privilege-resistant policy making

POLICY AREA	DEVELOPMENT POLICY OPERATIONS PRIOR ACTION OR TRIGGER	PROGRAM FOR RESULTS DISBURSEMENT-LINKED INDICATOR	INVESTMENT PROJECT COMPONENT	TECHNICAL ASSISTANCE PROJECT COMPONENT
CITIZEN ENGAGEMENT	Policy on notice and comment or regulatory impact assessments introduced.	The share of regulations affecting the private sector going through the Notice and Comment System.	Funding for an automated Notice and Comment System.	Capacity building for civil servants on regulatory impact assessments. Capacity building for citizens and journalists on participatory process.
TRADE AND CUSTOMS	Customs code made publicly available. Trade clearing procedures and formalities are made publicly available.	An automated risk-based inspection system is in place. A formal appeals mechanism is established for customs-related grievances.	Funding for electronic processing of customs declarations. Funding for an automated risk-based inspection system.	Support to reform of trade clearing procedures. Regional projects to facilitate cross border trade and reduce face-to-face interactions.
PUBLIC PROCUREMENT	Public procurement policy announced with a defined and regulated procedure for public opening of tenders.	An e-procurement system is put in place and used for all tenders.	Funding for the development and implementation of an e-procurement system.	Support to the development of a public procurement regulatory framework.
ALLOCATION OF PUBLIC LAND	A transparent policy and process for allocation of public land publicly available.	An independent appeal body is established with clear procedures. A public database of land registry and titles established.	Funding for a database of land registry and titles.	Support to the development of a policy for public land allocation or a database on available public land.

POLICY AREA	DEVELOPMENT POLICY OPERATIONS PRIOR ACTION OR TRIGGER	PROGRAM FOR RESULTS DISBURSEMENT-LINKED INDICATOR	INVESTMENT PROJECT COMPONENT	TECHNICAL ASSISTANCE PROJECT COMPONENT
INVESTMENT INCENTIVES	Clear criteria established and publicly available for award of investment incentives.	Establishment of a public database on existing investment incentives. Establishment of a grievance and redress mechanism.	Funding of a public database on existing investment incentives.	Support for designing a transparent investment incentives scheme or a grievance and redress mechanism
BUSINESS REGULATION	New law or policy enacted stipulating risk-based inspections of businesses.	A risk-based inspections system is established and implemented with clear criteria and rules.	Funding of automated business registry and risk-based inspection system.	Support for the development of a risk-based system for tax inspections.
COMPETITION POLICY	A full-fledged competition policy and legal framework is enacted, applicable to all sectors and economic agents and with provision for an institutional setup.	The competition agency is provided independence from the political process (e.g., autonomy over agency budget).	Funding provided for the creation and operations of the competition agency for a defined period.	Capacity building support to competition agency.
PUBLIC ACCOUNTABILITY MECHANISMS	Freedom of information and conflict of interest laws adopted.	Conflict of interest regulations adopted and staff trained. Proactive disclosure of policies adopted and implemented.	Funding for an electronic asset and interest declaration system.	Support the introduction of laws on access to information, conflict of interest, and asset disclosure.



Conclusion

While it is challenging to address the problem of policy capture and privilege seeking, tools exist that can create opportunities for policy dialogue and reforms even in highly captured environments. The first step is to evaluate the gaps in the existing legal and regulatory framework to identify potential entry points for policy reforms. A well-sequenced

and critical mass of such reforms may have a cumulative effect over time and can create a dent in a privilege-ridden system. Once the gaps in the legal and regulatory framework have been identified, a rich variety of policy instruments are available to support such reforms in a programmatic manner and to exploit synergy between different policy areas.



References

Mahmood, Syed Akhtar, and Meriem Ait Ali Slimane. 2018. [Privilege-Resistant Policies in the Middle East and North Africa: Measurement and Operational Implications](#). MENA Development Report. Washington, DC: World Bank.

World Bank. 2017. [World Development Report 2017: Governance and the Law](#). Washington, DC: World Bank.

Resources

For additional information on applying this tool and integrating results into policy dialogue, please contact, David Bernstein, Francesca Recanatini or Meriem Ait Ali Slimane at the World Bank. The original questionnaires and the result of the analysis in the Middle East and North Africa Region can be found online [here](#).

