

CORRUPTION AND HUMAN RIGHTS: IMPROVING ACCOUNTABILITY

HEARING BEFORE THE TOM LANTOS HUMAN RIGHTS COMMISSION HOUSE OF REPRESENTATIVES

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CORRUPTION AND HUMAN RIGHTS: IMPROVING ACCOUNTABILITY

THURSDAY, JUNE 16, 2016

HOUSE OF REPRESENTATIVES,
TOM LANTOS HUMAN RIGHTS COMMISSION,
Washington, DC.

The Commission met, pursuant to call, at 3:01 p.m., in Room 2200, Rayburn House Office Building, Hon. James P. McGovern [co-chairman of the Commission] presiding.

Mr. MCGOVERN. The hearing will come to order. Good afternoon everybody. Welcome to the Tom Lantos Human Rights Commission hearing on Corruption and Human Rights: Improving Accountability.

I will introduce our witnesses in a few minutes, but I would like to thank them now for taking the time to be with us today. As you may know, the U.S. State Department plays a primary role in developing foreign policy responses to address international corruption. We invited the State Department to testify at this hearing, but the invitation was declined yesterday. I regret that we will not be hearing from State on an important problem identified both in the 2015 National Security Strategy and the Quadrennial Diplomacy and Developmental Review.

I was especially looking forward to hearing from State how Secretary Kerry view U.S. participation and outcomes from the Global Anticorruption Summit that happened last month in the U.K. However, since State is not here, we will be sending the Secretary many written questions, and we will make his responses publicly available, and we look forward to those responses hopefully in an expeditious manner.

We have known that international corruption is a problem for a long time. Back in 1977, the Congress passed the Foreign Corrupt Practices Act, which prohibits the bribery of foreign officials. More recently, U.S. anticorruption efforts are focusing on grand corruption and kleptocracy, an extreme form of high level public corruption that often involves state capture by business elites or state predation by corrupt actors.

This Commission is interested in corruption, because it is widely acknowledged to be linked to human rights abuses. Corruption can reduce the political will of a government to respect, protect, and fulfill human rights obligations, as well as the financial capacity of a government to provide basic services and welfare to its citizens. It can weaken government accountability and transparency and facilitate the hold on power by authoritarian actors.

There are plenty of examples of this. You know, when a judge accepts a bribe to alter a court decision, that deprives someone of their right to a fair trial. Offering basic services, such as medical treatment or access to water, on the basis of bribe payments discriminates against non-bribe payers and deprives them of the right to those services.

When public funds destined for these same services disappear into the pockets of officials, the funding for them simply disappears. When officials accept bribes to import toxic waste, or to grease the illegal passage of human trafficking victims across borders, at a minimum, they are facilitating human rights violations. And when corrupt acts by government officials and elites are committed with impunity, then the rule of law is degraded for all.

We can see the correlation between international corruption, human rights, and development just by comparing where countries fall on some of the well-known indices. In 2015, none of the Transparency International's most corrupt countries were considered

free by Freedom House, and most were categorized as having low or medium human development on the U.N. Development Program's human development index.

Under both Presidents George W. Bush and Obama, the U.S. developed strategies to fight corruption and kleptocracy. The Obama administration announced additional anticorruption commitments related to financial transparency following release of the so-called Panama Papers in April of 2016.

The questions that concern us today are whether we are doing enough, and whether what we are doing adequately addresses the relationship between corruption and human rights. As I mentioned earlier, last month, Prime Minister Cameron of the United Kingdom hosted the International Anticorruption 2016 Summit. More than 40 countries, including the United States, attended.

The final 9-page communique emphasizes enhancing transparency, which is certainly appropriate, and includes a section on punishing the corrupt by ensuring and enforcing domestic laws and increasing international cooperation around their pursuit.

The communique highlights some measures I have supported for a long time, making it harder for those who are corrupt to travel and do business in our country. So all of this sounds good, but the communique is also notable for what is not emphasized. Human rights is mentioned exactly twice: First, to note that tackling corruption is vital for protecting human rights; and second, to say that the improvement of enforcement capabilities will be undertaken while respecting human rights. Meanwhile, the topic of corruption in sports merited two full paragraphs.

The summit recognized that people should be able to report corruption without fear of reprisal, and there are references to protecting whistleblowers, but there is nothing explicit about the risk of physical attack, imprisonment, or even death that people who expose corruption face. The communique mentioned supporting those who have suffered from corruption, with a lot of attention on asset recovery. This is fine as far as it goes, but what principles should govern the use of recovered assets? Where corruption is linked to human rights violations, where is the commitment to use assets for reparations for the victims? Where would the sacrifices of Sergei Magnitsky be if Congress had not recognized his fight against corruption in Russia. What about the heroic efforts of civil society in Guatemala and Honduras that challenged decades, even centuries of corruption by officials and elites in these two countries?

Finally, there is no reference in the communique to prosecution at the international level of those responsible for corruption. It seems to me that the option of international prosecution, especially for kleptocrats, should be on the table.

I am glad to see corruption and its consequences receiving more attention. Just this week, the OECD and the International Bar Association are holding anticorruption conferences in Paris, but I am concerned that despite the linkages between human rights and corruption, policy efforts to address these two issues are running on distinctly separate tracks. International anticorruption commitments, including those just made at the London summit, do not reference international human rights instruments, yet regimes that commit human rights violations with impunity also commit corruption with impunity. Better said, impunity facilitates both human rights violations and corruption, and improving accountability is key to ending both human rights abuses and grand corruption.

So I look forward to hearing today from our witnesses about what has been achieved in the fight against corruption, including their views on the London summit. I am also eager to hear their recommendations for what more is needed to ensure accountability, especially for public officials who are responsible for grand corruption, and I am also interested in hearing any suggestions for Congress, and for those of us who are concerned about this issue, concrete steps that we might consider taking in the coming weeks and months.

[Statement of Mr. McGovern follows:]

**PREPARED STATEMENT OF THE HONORABLE JAMES P. MCGOVERN, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MASSACHUSETTS AND COCHAIRMAN OF THE TOM
LANTOS HUMAN RIGHTS COMMISSION**

Good afternoon.

I join my distinguished colleague and Co-Chairman of the Tom Lantos Human Rights Commission, Rep. Joe Pitts, in welcoming all of you to today's hearing on blasphemy laws and censorship, and the threat they pose to freedom of expression around the world. I add my thanks to our distinguished witnesses for their work and their presence today. I am especially pleased to welcome back Ambassador Saperstein and Dr. Courtney Radsch, both of whom have appeared before this Commission on other occasions.

Article 19 of The Universal Declaration of Human Rights proclaims that "everyone has the right to freedom of opinion and expression." Yet today this freedom is under threat all around the world by governments and by non-state actors.

Authoritarianism is on the rise, as seen in the crackdown on civil society that is spreading across the globe. In many countries today, voicing dissent puts you at risk for government retaliation and harassment. It is possible to be imprisoned over tweets, as in the case of my friend Nabeel Rajab, a human rights activist in Bahrain, and now, once again, a prisoner of conscience. Overly broad anti-terrorism laws, like the one passed in Russia this week, limit free speech rights under the guise of national security interests. China continues to lock up democracy activists and censor the internet.

As authoritarianism has risen, respect for press freedom around the globe has declined steeply. Turkish authorities physically took over their country's largest daily newspaper earlier this year and installed their own board. Azerbaijan recently released famed journalist Khadija Ismayilova from prison due to international pressure, only to jail scores of other journalists when they thought our backs were turned. Freedom House, with us here today, recently reported that in 2015 press freedom had declined to its lowest point in 12 years.

The violent actions of non-state actors are also eroding freedom of expression. Journalists are slain by the criminal and terrorist organizations on which they report -- and studies have found that 9 out of 10 these murders go unpunished. Extremists in Bangladesh are killing secular bloggers and writers, religious minorities, and academics. Around the world, environmental activists are assassinated for their efforts -- Honduras and Brazil are brazen examples. Global Witness reported 185 killings of land and environmental defenders in 2015, making it the worst year on record. If criminals and terrorists can silence just one voice with violence, they are able to chill the speech of countless others with fear.

Today's hearing includes a particular focus on an issue at the intersection of both government censorship and extremist violence -- blasphemy laws. These laws, which criminalize irreverence toward holy personages, religious artifacts, customs, or beliefs, are found throughout the world, not only in states governed by authoritarian regimes. According to the Pew Research Center, in 2012, nearly a quarter of the world's countries and territories had blasphemy laws or policies. The punishment for violating these laws ranges from fines to corporal punishment.

The Middle East and North Africa is the most notorious region for laws restricting blasphemy. But these laws also exist in Europe, Asia, and the Americas. The U.S. actually still has blasphemy laws on the books in some states, including my own state, Massachusetts, though the First Amendment prohibits their enforcement. In 1952, Justice Tom Clarke, writing for the Supreme Court in *Burstyn v. Wilson*, argued that “it is not the business of government in our nation to suppress real or imagined attacks upon a particular religious doctrine.”

And it should not be the business of government in any nation. Governments pass blasphemy laws believing that their citizens, or even a religion itself, should be protected from offense. But these laws curtail the right to freedom of expression, and are ineffective at protecting the right to freedom of religion. In fact, research shows that these laws correlate to a rise in hostility, and are unevenly enforced. Cases are brought disproportionately against religious and ethnic minorities, and the laws themselves may serve to legitimize violence against these minorities by religious extremists.

Through the Tom Lantos Human Rights Commission’s Defending Freedoms Project, both Congressman Pitts and I advocate for prisoners of conscience who are serving medieval-era punishments for violating blasphemy laws. Raif Badawi, a secular blogger in Saudi Arabia, was sentenced to 1,000 lashes and 10 years in prison for his writings, which authorities claimed “insulted Islam.” Asia Bibi, a Christian woman in Pakistan, is facing a death sentence for insulting Islam during an argument with her co-workers over a glass of water. These two cases perfectly illustrate the dangers of blasphemy laws, how they encroach on freedom of expression, are used to persecute religious minorities, and provide justification for violence by extremists.

Unfortunately, much of the world disagrees with us on blasphemy laws. It is no doubt a fraught and sensitive topic to address. But here in the U.S., strong protections for freedom of speech and freedom of religion co-exist. We know it is possible for each right to be exercised without infringing upon the other. We must continue to lead by example on this issue.

In the face of all these threats to freedom of expression, governments need to do more. Government authorities must abandon their intolerance for dissent, and cease their crackdown on civil society and the press. No country can achieve lasting stability with policies that violate the right to freedom of expression.

So I look forward to hearing our panelists today on the challenges posed by worldwide threats to freedom of expression, and their recommendations for what more Congress can do to preserve this fundamental right, which is a cornerstone of all others.

Thank you.

So with that, I want to welcome our panel of witnesses. I am going to introduce them in the order in which they are speaking.

Mr. John Sifton, welcome back. He has been before our committee for -- I think this is the third time in 2 weeks?

Mr. SIFTON. Yes.

Mr. MCGOVERN. But he is the Deputy Washington Director for Human Rights Watch and works on South and Southeast Asia. Previously, he was the Director of One World Research and also worked for the International Rescue Committee, primarily in Afghanistan and Pakistan. And in 1999, he worked at a refugee advocacy organization in Albania and Kosovo. He holds a law degree from New York University and a bachelor's degree from St. John's College in Annapolis.

Ms. Stephanie Ostfeld is the acting head of Global Witness' U.S. office. Global Witness is an international advocacy organization that works to break the links between natural resource exploitation and conflict and corruption. Based in Washington, D.C., she advocates for increased corporate transparency, closing loopholes in anti-money laundering laws, effective enforcement of anti-bribery and anti-money laundering statutes, and revenue transparency in the oil, gas, and mining sector. She holds an MA in international human rights from the University of Denver, Josef Korbel School of International Studies.

Mr. Matthew Murray served as legislative assistant for National Security to Senator Edward Kennedy, and was an associate attorney at Baker & McKenzie, where he helped the firm launch a Russia law practice. In 1991, he founded Sovereign Ventures, Inc., a management consultancy firm that advised on how to reduce corruption risk and engage in dispute resolution.

In 2000, Mr. Murray cofounded the Center for Business Ethics and Corporate Governance, a nonprofit dedicated to building rule-based markets in Russia, Central Asia, and Eastern Europe. In 2011, he was invited by the Brookings Institution to help launch the World Forum on Governance and cowrite a research paper entitled, Freedom from Official Corruption as a Human Right. He will discuss that research today. Mr. Murray holds a masters from SIPA and JD from the law -- for law school. Right? Did I say that right? Yeah.

Mr. MURRAY. At Columbia, right?

Mr. MCGOVERN. At Columbia. Yeah. All right. Columbia, right? All right. That was missing here, but I knew there was something missing, but a very, very smart person. Yeah.

And, finally, the Honorable Mark L. Wolf, who was appointed to the United States District Court for the District of Massachusetts in 1985; served as its chief judge from 2006 through 2012, and is now a senior judge. He has previously served in the Department of Justice as a special assistant to the Deputy Attorney General of the United States and the Attorney General of the United States, and as Deputy United States Attorney for the District of Massachusetts and Chief of the Public Corruption Unit in that office. He was also in private practice in Washington, D.C., and in Boston. Judge Wolf is the Chair of Integrity Initiatives International, and it is in that capacity that he is testifying today. Judge Wolf is a graduate of Yale College and the Harvard Law School.

And I should say for the audience here that I think what kind of sparked my interest in this was, you know, Judge Wolf, who has talked to me extensively about this issue, and about, you know, some of his ideas, which we will explore when he testifies.

So everybody can submit their formal testimony for the record. Without objection.

And at this point, we will begin with Mr. Sifton, and we welcome you all here.

STATEMENT OF JOHN SIFTON, DEPUTY WASHINGTON DIRECTOR, HUMAN RIGHTS WATCH

Mr. SIFTON. Thank you, thank you. And I would like to start my testimony with a quick tribute to a minister of parliament who was brutally killed today in the United Kingdom. Jo Cox was a long-time human rights advocate with Oxfam. She was also, as a minister of parliament, a campaigner against corruption, and as recently as last month, had urged David Cameron both in parliament and in the newspapers to do more to rein in the excessive secrecy for British tax havens, and was a tremendous friend of many Human Rights Watch staff. I only had the privilege of meeting her on one occasion, but many of HRW's staff are devastated today.

Thanks for this opportunity to speak about the linkage between grand corruption and human rights. The issue really, unfortunately, is a persistent one. Human Rights Watch has now been working on the connections between grand corruption and human rights for almost 20 years. And the reason we work on corruption is because we know it is one of the key drivers of human rights abuses.

Mismanagement and corruption fuels human rights abuses in numerous ways, and my written testimony, you know, reviews them. The main way is that grand corruption deprives government treasuries and coffers of billions of dollars that could be used for public services in health, education, and key social areas.

You know, as you know, economic, social, and cultural rights are a progressive realization scheme, you know, where states are given an opportunity to progressively realize rights to education, health, and other basic services, and the more money they have, the more is expected of them. Corruption essentially robs them of that capacity.

I review a couple of examples in my written testimony, from Angola, for instance, where almost 10 percent of the GDP disappeared at one point in the last decade, and a little bit later, it was documented that another \$41 billion had disappeared in subsequent years. Nigeria's Niger Delta, we have research showing, you know, loss of local government revenues to corruption and mismanagement, and how it has contributed to the woefully inadequate health and education services.

Corruption also leads to violations of the right to free expression and free assembly. Governments withhold information from the public, and they crack down on journalists and civil society who try to expose their mismanagement and their corruption. And this is probably where we, as an organization that focuses more on civil and political rights typically than economic and social rights, this is where we document the biggest problems.

So recently in Malaysia, for instance, we have seen Prime Minister Najib Razak implicated in an enormous scandal involving his country's sovereign wealth fund. And he was already cracking down on opposition and dissent before this scandal broke, but since, he has been using the defamation and sedition laws and other attempts to basically shut down any media outlet or blogger or any dissenting voice who is attempting to expose, write about, elucidate the massive corruption scandal which is threatening him.

In Angola, where I just mentioned, there is continual problems with the government cracking down on journalists who are trying to expose corruption. Rafael Marques, who is an internationally recognized Angolan journalist, who runs the anticorruption blog, Maka Angola, has been repeatedly harassed by authorities, arrested, and continues to face all kinds of legal problems.

But I want to use the bulk of my time left to talk about Azerbaijan, which is the home to billions and billions of dollars in natural gas reserves. The Panama Papers -- we already knew how corrupt the regime was, but the Panama Papers really brought home the dramatic scale of the corruption. They have exposed evidence indicating that his -- that Aliyev's family, that President Aliyev's family has extensive secret offshore

accounts with all kinds of business interests, including in gold mining.

Azerbaijan's government has essentially been waging an oppressive campaign against anybody who has been attempting to expose their corruption for the last few years, and this has led to dozens of journalists and human rights activists being locked up.

Now, more recently, a couple of them have been released, which is good news and we hail that, but the fact of the matter is, Azerbaijan remains a place where if you attempt to expose the corruption of the regime, you are at great risk of being arrested and thrown in jail on spurious charges.

It also, though, gives an example of what happens when governments stand up and demand that governments, like Azerbaijan's, not crack down. The reason so many dozens of activists have been released in Azerbaijan in recent weeks and months is because of the pressure that has been put on them by governments like ours, the United Kingdom's, and others.

The combination of grand corruption and unaccountable governments is a serious threat to human rights worldwide, and it should come as no surprise that in Angola, Azerbaijan, China, and many other countries, unaccountable leaders are implicated in corruption and their leaders face constant human rights challenges. It is no surprise. Corruption entrenches and enriches autocrats while corroding government institutions.

My written testimony elucidates on how the U.S. Government can better attack this problem, and you have listed some of the things that have happened in the past. I am proud to say that my late father, who was also a Federal judge, worked on the Foreign Corrupt Practices Act when he worked for Senator Fulbright way back in the old days, over 50 years ago, but the efforts have to continue today in new and creative ways.

Judge Wolf is going to talk about the proposal for the international corruption court. In my written testimony, I basically endorse this proposal. Human Rights Watch believes the international corruption court, which I am not going to talk about, because I think it is much better for other panelists to talk about, could be a valuable step forward, but there are other key challenges, which I have outlined at the very end of my testimony: ensuring that the U.S. government anti-kleptocracy initiatives are sufficiently resourced, so in other words, paying for them; implementing new measures to stop corrupt officials from spending their illicit funds in the U.S., that includes legislation that would require disclosure of beneficial owners; and addressing shell companies. I think David Cameron, you know, was disappointing in London during that conference, but it is also true, as *The Economist* recently pointed out, that the U.S. has a lot to answer for, too, for its State corporate laws in places like Delaware.

There are other things about pressing the World Bank that are in my testimony about the Stolen Asset Recovery Initiative. As you say, it met without objection.

If these measures are undertaken together with the other proposals that are going to be put forward today, then the prospects for an international court will actually grow, because more governments will be taking more steps to root out kleptocracy. And just as the U.S. set an example way back in the 1970s, with the Foreign Corrupt Practices Act, and paved the way for other nations to enact antibribery legislation, the U.S. can enhance its leadership today by strengthening its own anti-kleptocracy efforts at a domestic level.

So that is the gist of it. I will leave it there, and I look forward to questions.

[The statement of Mr. Sifton follows:]

Tom Lantos Human Rights Commission
“Corruption and Human Rights: Improving Accountability”
June 16, 2016

Testimony by John Sifton
Deputy Washington Director
Human Rights Watch

Mr. Chairman and members of the committee,

Thank you for this opportunity to speak about the linkage between grand corruption and human rights. The issue, unfortunately, is a persistent one—Human Rights Watch has now been working on the connections between grand corruption and human rights for almost 20 years. And the reason that we work on corruption is because we know that it is one of the key drivers for human rights problems in most parts of the world.

Mismanagement and corruption impacts human rights in numerous ways:

- **Grand corruption deprives government coffers of billions of dollars in public funds that could and should be invested in much-needed public services such as health, education, or other key social services.** Under the International Covenant on Economic, Social, and Cultural Rights, governments are obligated to “progressively realize” their citizens’ rights to access education, health, and other basic services to the extent of available resources. In many countries, high-level corruption serves as a direct impediment to this obligation, as funds that could otherwise go towards bolstering woefully inadequate public services simply disappear without explanation, often siphoned off by corrupt officials.
 - Human Rights Watch has documented that in Angola, for instance, approximately \$4.22 billion in government funds, or about 9.25 percent of the country’s annual GDP, disappeared between 1997 and 2002. At the same time, the total amount of social spending in the country was around \$4.27 billion. Every measurable standard of human development fell during that time, in part due to the fact that billions of dollars that could have been used for much-needed social services disappeared.
 - Then in 2012, the International Monetary Fund reported that \$41.8 billion could not be accounted for between 2007 and 2011. Even though the government has provided partial explanation for the disappearance of some of the funds, it still has not accounted for at least \$4 billion in missing funds.

- In Nigeria's oil-rich Niger Delta, Human Rights Watch research has shown how the loss of local government revenues to corruption and mismanagement has contributed to the woefully inadequate state of basic health and education services.
- **Corruption leads to violations of the rights to free expression and information because government officials do not want any scrutiny of their corrupt activities.** That has led governments to withhold key information from the public as well as crack down on journalists or nongovernmental organizations that seek to highlight problems related to a lack of transparency and corruption around the world.
 - For example, in oil-rich Equatorial Guinea, ruled by Teodoro Obiang, the world's longest serving head of state, and one whose family has repeatedly been implicated in hundreds of millions of dollars in corrupt activities, there is no independent media to scrutinize such activity.
 - In Malaysia, where Prime Minister Najib Razak has been implicated in an enormous scandal involving his country's sovereign wealth fund, the government has used overbroad criminal provisions, including its defamation and sedition laws, to harass or shut down media outlets that have reported on the scandal, and media outlets and blogs have been shut down and subject to cyberattacks.
 - In Angola, there has been a systematic effort to stifle the free speech of journalists and nongovernmental organizations, particularly those that try to expose corruption. Rafael Marques, an internationally-recognized Angolan journalist who runs the anti-corruption blog "Maka Angola," has repeatedly been charged under the country's draconian criminal defamation laws because of his reporting on alleged government corruption in the country's lucrative oil and diamond sectors.
 - In Azerbaijan, the home to billions of dollars in natural gas reserves, President Ilham Aliyev, an autocrat who succeeded his father in 2003, has overseen a dramatic crackdown on independent civil society in recent years. For example, the government has refused to allow foreign funding of groups that are seeking to promote financial transparency in regards to the government's massive natural gas revenues. In recent months, the government has also frozen the bank accounts of independent organizations and launched politically motivated investigations against civil society, forcing them to stop their work and remain silent about the government's actions.

Needless to say, Azerbaijan is disgustingly corrupt. The recently released Panama Papers have exposed evidence indicating that the family of Azerbaijan President Ilham Aliyev hold extensive secret offshore accounts, with various business interests, including in gold mining. Meanwhile, the government has wasted huge sums of hydrocarbon revenues on prestige projects that don't produce inclusive growth. And Azerbaijan's government has essentially been waging a repressive campaign against critics—and there has been a marked deterioration to the country's already poor rights record. In the least year, the government has arrested or imprisoned dozens of human rights defenders, journalists, and bloggers on politically motivated charges, prompting others to flee the country or go into hiding. The government has frozen bank accounts of independent civic groups and their leaders, in some cases forcing them to shut down. Due to sustained outside pressure, authorities have since pardoned or conditionally released over a dozen activists and journalists imprisoned on politically motivated charges, but many others remain behind bars. The authorities have also unfrozen the bank accounts of some nongovernmental groups and their leaders. But existing legislative restrictions make it effectively impossible for these groups both to use the funds in their accounts and to receive foreign funding.

The basics remain the same: people who expose corruption run a risk of reprisal for commenting on development projects or exposing the misuse of funds or harmful projects.

The combination of grand corruption and unaccountable governments is a serious threat to human rights worldwide. It should come as no surprise that in Angola, Azerbaijan, Equatorial Guinea, China, and in many other countries, unaccountable leaders are implicated in corruption and that citizens there face constant human rights challenges. After all, corruption entrenches and enriches autocrats while corroding government institutions essential for a functional state, and undermines the ability for millions of people to enjoy their rights.

How the US Can Combat Grand Corruption

Even though corruption is persistent and pervasive worldwide, there are many things that can be done to attack the problem. To its credit, the US government has been at the forefront of these efforts since at least the 1970s when the groundbreaking Foreign Corrupt Practices Act was passed. That law has made it harder for any company that falls under it to engage in

corrupt practices. In the last few years, the US has also adopted a second strategy that Human Rights Watch believes is critical to combat corruption: making it much harder for government officials, their associates, and their family members to spend their ill-gotten gains.

In 2006, President George W. Bush launched an international effort to combat kleptocracy. It offered a number of key measures that should make it much harder for kleptocrats to profit from their activities, including: denying visas to individuals implicated in corruption, increasing multilateral efforts to combat corruption, vigorously prosecuting corruption offenses, and seizing illicit assets of kleptocrats.

These efforts have grown and expanded under President Obama. For example, in 2010, the administration led efforts to get G-20 countries to commit to enhanced efforts to combat corruption. In 2011, the US froze tens of billions of dollars in assets tied to the government of Libya's then ruler Muammar Gaddafi. And the same year, the US Department of Justice launched a new anti-kleptocracy unit to combat corruption.

These laudable efforts still fall short of what is needed to secure real accountability for corrupt officials, however.

An International Corruption Court

The steps that the US has taken are important, but they are not enough. Grand corruption is a global problem that demands a truly multilateral solution. Far too many officials continue to steal public funds and spend them on lavish lifestyles. Even though the G-20 committed to combat this scourge, few are actually attacking the problem, and some are part of it. In that context, Judge Mark Wolf's proposal for an international anti-corruption court is something Human Rights Watch believes could be a valuable step forward. But there are challenges ahead.

The promise of the court has to be tempered with the technical and legal hurdles that would have to be overcome to make such a court a reality. It would need to have jurisdiction, investigative capacity, and operate in a way that still protects the rights of the accused. More challenging are the political realities, notwithstanding some of the technical challenges in starting such a court. Most notably, many governments, especially those ruled by kleptocrats, will not easily agree to a court that holds them accountable for plundering public funds. But that does not mean nothing can be done. Instead it means that the US government through the Congress and the Executive Branch need to build momentum for

such a court by strengthening their efforts to combat kleptocracy; pressing other governments to adopt similar approaches; and starting the political and technical work needed for an eventual court. Key steps include:

- Ensuring that US government anti-kleptocracy initiatives are sufficiently resourced to investigate and prosecute corrupt officials; and to take other measures that will stop the theft of public funds.
- Implement new measures to stop corrupt officials from spending their illicit funds in the US. This includes passing legislation that would require meaningful disclosure of the beneficial owners of companies in the US to avoid the use of “shell companies.” And to urge the US Securities and Exchange Commission to release its revised rules under Section 1504 of the Dodd Frank financial reforms act so that extractive companies disclose their payments to foreign governments. This is especially important now that Canada and the European Union have already moved ahead of the US by initiating their own rules.
- Urge the administration to build a coalition to combat kleptocracy by working with existing governments and identifying new partners to implement the 2010 G-20 Action Plan against corruption and so that they adopt the United Nations Convention Against Corruption.
- Support efforts to examine the legal, administrative, and other procedural steps needed to create an International Anti-Corruption Court.
- Press the World Bank to insist on greater fiscal transparency and accountability, beyond its efforts through the Stolen Asset Recovery initiative and its efforts on extractive industry transparency. It should also support efforts to bring governments into compliance with the IMF’s Code of Good Practices on Fiscal Transparency and highlight all gaps in transparency and accountability, be they within military revenue and expenditure, military conglomerates, or state-owned enterprises.

If these measures are undertaken, then the prospects for an international court will grow because more governments will be taking more steps to root out kleptocracy and other forms of grand corruption. Just as the US set a global precedent with the Foreign Corrupt Practices Act in the 1970s, which paved the way for other nations to enact anti-bribery legislation, the US can enhance its leadership by strengthening its own anti-kleptocracy efforts and working with other governments to do the same.

Thank you and I look forward to your questions.

Mr. MCGOVERN. Thank you.
Ms. Ostfeld.

**STATEMENT OF STEPHANIE OSTFELD ACTING HEAD OF U.S. OFFICE,
GLOBAL WITNESS**

Ms. OSTFELD. Good afternoon, Co-chairman McGovern. Thank you for this opportunity to appear before the Commission to discuss corruption and human rights. Global Witness participated in the Anticorruption Summit recently hosted by the U.K., and we are delighted to have the opportunity to share with you some of our proposals for curbing corruption and protecting human rights.

So Global Witness has offices in Washington, D.C., and London, and for over two decades our hard-hitting reports and investigations --

Mr. MCGOVERN. Is your mic on? It should light up. Yeah.

Ms. OSTFELD. Can you hear? Is it better now? How about now?

Mr. MCGOVERN. Good.

Ms. OSTFELD. Okay. So Global Witness is an NGO with offices in Washington, D.C. and London. For more than two decades, our hard-hitting reports and investigations have exposed how timber, diamonds, minerals, oil, and other natural resources have incentivized corruption, destabilized governments, and led to war.

In our work around the world, we see the same problem all the time. Fledgling economies stifled, and ordinary people trampled by corrupt regimes that rule with one iron fist and steal with the other. To some, corruption may appear a victimless crime or just the way business is done, but it is a key reason why so many of the world's poorest, most oppressive countries remain that way.

Take the fragile political transition in Burma, for instance. Global Witness has estimated that jade production in 2014 alone generated the equivalent of nearly half of the country's GDP, with the major benefits going to some of the most notorious names from the military junta era. This provides tremendous resources to those most likely to oppose reform by Burma's new civilian-led government.

But corruption isn't something that just happens over there. Corruption on the scale that we see in our investigations could not happen without the actions of global facilitators. The corrupt need a bank willing to handle money without asking questions, or a lawyer to work out how to skirt laws and disguise their identity.

Time and again, our investigations highlight the same problem, and that is sham companies, which allow those who steal state funds to move it undetected through the international financial system. This is what we are trying to change.

So take Nigeria. In 2011, Royal Dutch Shell and the Italian oil company, Eni, paid more than \$1 billion for one of West Africa's largest offshore oil fields. The payment was equivalent to 80 percent of Nigeria's proposed 2015 health budget, but the money didn't end up in state coffers. Instead, it went to a front company owned by the former Nigerian oil minister, who had granted his own company rights to the oil field back in 1998. Now, Shell and Eni have always denied they knew their payment would be going into private pockets, but evidence gathered by Global Witness and our partners shows otherwise. Matters are now coming to a head. Eni's current and former CEOs are under investigation in Italy, while Shell's headquarters in Holland were recently raided by 50 police officers.

The case should put decision-makers and investors on notice. Laws have been enacted in the U.S. and EU which will require extractive companies to declare the payments they make to foreign governments. If properly implemented, these new laws would provide real legal, reputational, and financial consequences, and hopefully relegate this type of behavior to the past, but the secret companies at the heart of this deal

also need to be a thing of the past.

The Panama Papers have shown the world how deep a problem it is, but this isn't a new problem. The World Bank found that opaque company structures were used in at least 70 percent of the grand corruption cases they looked at over a 30-year period. And contrary to the common misperception that this type of secrecy is mainly provided by sunny tax havens in the Caribbean, the U.S. is actually the heart of the problem. A separate academic study from 2014 found that many U.S. States are among the easiest jurisdictions in the world to set up an untraceable company, even for inquiries that sounded like a clear front for terrorism, or that should have raised the corruption red flag.

So in January, Global Witness published an undercover investigation into the role of anonymously-owned companies and money laundering. You may have seen it on 60 Minutes. We sent an undercover investigator into 13 New York law firms. He posed as an adviser to an unnamed African Minister of Mines, who wanted to secretly bring suspect funds in the United States to buy a mansion, a yacht, and a private jet, and the results were shocking. Twelve of the 13 lawyers provided suggestions about how to move the money using anonymous shell companies and trusts, and 11 of them suggested using American shell companies as part of the structure to hide the fictitious minister's identity.

Now, many of the lawyers indicated they would have to do further checks before agreeing to take our investigator on as a client, no money was exchanged, and nobody broke the law, but what is really remarkable about our findings is how consistent the lawyers' suggestions were during the meeting with our investigator. It goes to show you this is how it is done, and that it is far too easy for corrupt officials and other crooks to hide behind the secrecy of anonymously-owned companies.

But there is hope. The U.S. has long led the world in the fight against global corruption, we were the first country to adopt antibribery legislation, and we have seen leadership from both sides of the aisle, with Presidents Bush and Obama each championing measures to curb corruption. And last month at the U.K.'s anticorruption summit, the U.S. and our closest allied governments clearly acknowledged the damage done by corruption and the threat it poses. So we were happy to see heads of state and senior politicians agree to strong new measures, including company ownership transparency, open contracting, and better cooperation to track down and return stolen funds, but Congress has a really important role to play, and we encourage you to pass two bipartisan measures.

Now, the first is the Corporation Transparency and Law Enforcement Assistance Act, which is H.R. 4450, introduced by Representatives Peter King and Carolyn Maloney. It would end hidden company ownership and prevent corrupt money from entering the United States. And the second is the Global Magnitsky Human Rights Accountability Act, H.R. 624, introduced by Representative Chris Smith and cosponsored by the co-chair. It would deny human rights violators and the corrupt entry to the U.S. and access to U.S. property transactions.

And we also support five additional recommendations: The first is to increase transparency in the contracting process among legal entities that receive Federal funds; the second is to implement beneficial ownership transparency requirements for real estate, escrow agents, and luxury goods; the third is to increase resources for law enforcement cooperation to fight corruption; fourth is to make the transparent and responsible management of natural resources an integral part of U.S. foreign policy objectives; and, finally, to protect human rights and support civil society and holding governments to account for governance of the natural resources sector.

Thank you for inviting Global Witness to testify today. We look forward to working with you and your colleagues to identify ways to prevent the U.S. from enabling corruption, and to hold individuals and companies accountable for their actions.

We are pleased the U.K. Anticorruption Summit brought us closer to transforming

corruption into a mainstream issue, and that Congress is continuing the momentum by hosting this important hearing.

I look forward to your questions.

[The statement of Ms. Ostfeld follows:]



global witness

**Tom Lantos Human Rights Commission
Hearing entitled: Corruption and Human Rights: Improving Accountability
June 16, 2016
Testimony of Stefanie Ostfeld, Acting Head of U.S. Office, Global Witness**

Good afternoon Co-Chairman McGovern and Co-Chairman Pitts. Thank you for this opportunity to appear before the Tom Lantos Human Rights Commission to discuss corruption and human rights. Global Witness participated in the Anti-Corruption Summit recently hosted by the UK and is delighted to have the opportunity to share with you our proposals for curbing corruption that we discussed at the Summit.

My name is Stefanie Ostfeld and I am the Acting Head of Global Witness' U.S. office. We are a non-governmental organization with offices in Washington, DC and London. For more than two decades, our hard-hitting reports and investigations have exposed how timber, diamonds, minerals, oil and other natural resources in some countries have incentivized corruption, destabilized governments and led to war. As a result, we believe that the only way to protect peoples' rights to land, livelihoods, and a fair share of their natural wealth is to advocate for transparency in the resources sector, sustainable and equitable resources management, and preventing the international financial system from enabling resource-related corruption.

In our work around the world, we see the same problem all the time: fledgling economies stifled and ordinary people trampled by corrupt regimes that rule with one iron fist and steal with the other. To some, corruption may appear a victimless crime, or just the way business is done, but it is a key reason why so many of the world's poorest, most oppressive countries remain that way. For a vast number of people, especially in the developing world, it manifests itself as poverty, disease, oppressive rule and, too often, war.

Corruption undermines countries' legal obligations to promote and protect human rights. Corruption of officials and politicians subverts civil and political rights, by disrupting the relationship between public officials and the tax payer, and creating incentives to suppress dissent and consolidate power, often leading to corrupt judiciaries, law enforcement and the military.

Corruption incentivizes the elites in countries to continue to impede democratization, human rights and economic inclusiveness in order to maintain their hold on power, and the vast wealth and immunity from prosecution that can go with it. Take the fragile political transition in Burma, for instance. Global Witness has estimated that jade production in 2014 alone generated the equivalent of nearly half of the country's GDP, with the major benefits going to some of the most notorious names from the military junta era, from former dictator Than Shwe to U.S. sanctioned drug lord Wei Hsueh Kang. This provides tremendous resources to those most likely to oppose reform by Burma's new civilian-led government,

posing a serious obstacle to achieving the freedoms, rule of law and full transition to democracy that the United States ardently hopes will take root there.¹

And it endangers the national security objectives of the United States, as well as our troops overseas. Global Witness has documented how the Taliban made approximately four million dollars last year from the illicit mining of lapis lazuli and other semi-precious stones in just one province of Afghanistan, and may make as much as six million this year. We documented how Afghan politicians and warlords were intertwined in conflict over who would control these lucrative mines, while these same politicians and actors are alleged to have paid off the Taliban. After narcotics, mining is assessed by the United Nations as the second largest source of income to the Taliban, funding the very insurgency that the American military has fought so hard against.²

But corruption isn't something that just happens over there. Corruption on the scale that we see in our investigations could not happen without the actions of global facilitators.

Ill-gotten gains don't disappear by themselves – there is a pattern that needs to be broken. The corrupt need a bank willing to handle money without asking questions, or a lawyer to work out how to skirt laws and disguise their identity. Time and time again, our investigations highlight the same problem: sham companies which allow those who steal state funds to move it undetected through the international financial system. This is what we are trying to change.

In Nigeria, in 2011, Royal Dutch Shell and the Italian oil company Eni paid \$1.1bn for one of West Africa's largest off-shore oil fields. The payment was equivalent to 80% of Nigeria's proposed 2015 health budget, but the money didn't end up in state coffers. Instead it went to a front company owned by the former Nigerian oil minister who had granted his company rights to the oil field in 1998.

Shell and Eni have always denied they knew their payment would be going into private pockets, but evidence gathered by Global Witness and our partners shows otherwise.³ Matters are now coming to a head: Eni's current and former CEO's are under investigation in Italy, while Shell's headquarters in Holland were recently raided by 50 police officers.⁴ We need these investigations to be thorough, and to lead to prosecutions of all culpable perpetrators of this corrupt deal.

This case should put decision makers and investors on notice. The Publish What You Pay movement, which we conceived of and co-launched over twenty years ago has led to laws enacted in the U.S. and EU which will require extractive companies to declare the payments they make to foreign governments. If properly implemented, these new laws will mean that we are going to see more and more examples of this kind resulting in real legal, reputational and financial consequences which will hopefully relegate this behavior to the past.

We also need to make the secret companies at the heart of this deal a thing of the past. The Panama Papers have shown the world how deep a problem this is, but it isn't a new

¹ <https://www.globalwitness.org/en-gb/campaigns/oil-gas-and-mining/myanmarjade/> and <https://www.globalwitness.org/en-gb/reports/lords-jade/>

² https://www.globalwitness.org/documents/18469/War_in_the_Treasury_of_the_People_-_Afghanistan_Lapis_Lazuli_and_the_battle_for_mineral_wealth_Low-Res.pdf

³ <https://www.globalwitness.org/en/campaigns/oil-gas-and-mining/shell-and-eni-misadventures-nigeria/>

⁴ <https://www.globalwitness.org/en/press-releases/shells-headquarters-raided-and-formal-investigation-launched-over-billion-dollar-nigerian-oil-deal/>

problem. We first exposed it in our 2009 report, *Undue Diligence*⁵, and in 2011 the World Bank found that opaque company structures were used in 70% of the grand corruption cases they studied over the last 30 years. Furthermore, contrary to the common misperception that this type of secrecy is mainly provided by sunny tax havens in the Caribbean, the U.S. is at the heart of the problem.⁶ A 2014 study found that many U.S. states are among the easiest places in the world to set up an untraceable company – even for inquiries that sounded like a front for terrorism or that should have raised a corruption risk.⁷

In January, Global Witness published an undercover investigation into the role of anonymously owned companies in money laundering that aired on 60 Minutes and was covered by the New York Times.⁸ We sent an undercover investigator into 13 New York law firms. He posed as an adviser to an unnamed African minister of mines who wanted to secretly bring suspect funds into the U.S. to buy a mansion, a yacht, and a jet. The results were shocking: 12 of the 13 lawyers provided suggestions on how to move the money using anonymous shell companies and trusts. Eleven of them suggested using American shell companies as part of the structure to hide the fictitious minister’s identity.

Many of the lawyers indicated that they would have to do further checks before agreeing to take our investigator on as a “client,” no money was exchanged and nobody broke the law. But what is really remarkable about our findings is how consistent the lawyer’s suggestions were during the meetings with our investigator. It goes to show you that — from the Panama Papers to our investigation — it is not about the behavior of individuals, however odious. It’s about what is wrong with the law, which makes it far too easy for corrupt officials and other crooks to hide behind the secrecy of anonymously owned companies.

But there is hope: the U.S. has long led the world in the fight against global corruption. We were the first country to adopt anti-bribery legislation, and we have seen leadership from both sides of the aisle with President George W. Bush and President Obama each championing measures to curb corruption.

And last month at the UK’s Anti-Corruption Summit, the United States and our closest allied governments clearly acknowledged the damage done by corruption and the threat it poses. We were happy to see heads of state and senior politicians agree to strong new measures, including company ownership transparency, open contracting and better cooperation to track down and return stolen funds.

There is now a lot of momentum to end anonymously-owned companies. This month, the UK will launch the first public register of the real owners of companies. By the end of 2017, all EU countries will likewise have central registries of beneficial ownership information. More and more countries are pledging to do the same. At the anti-corruption summit, Nigeria, Afghanistan, New Zealand, Jordan, Indonesia, Ireland and Georgia joined Australia, South Africa and a host of other nations moving toward this kind of transparency.

Global Witness welcomes the Administration’s summit commitments to curb corruption, including its commitment to require U.S. companies to disclose beneficial ownership

⁵ <https://www.globalwitness.org/en/campaigns/corruption-and-money-laundering/banks/undue-diligence/>

⁶ Halter, E. M., Harrison, R. A., Park, J. W., Does de Willebois, E. v., & Sharman, J. (2011). *The Pupper Masters: How the Corrupt Use Legal Structures to Hide Stolen Assets and What to Do About It*. Washington DC: Stolen Asset Recovery Initiative- The World Bank and UNODC.
<https://star.worldbank.org/star/sites/star/files/puppetmastersv1.pdf>

⁷ Findley, M., Nielson, D., & Sharman, J. (2014). *Global Shell Games: Experiments in Transnational Relations, Crime and Terrorism*. Cambridge: Cambridge University Press. <http://www.globalshellgames.com/>

⁸ <https://www.globalwitness.org/shadyinc/>

information. There is a strong role for Congress to play when it comes to stopping the corrupt and other criminals from hiding behind anonymous American companies and in curbing corruption more generally.

We encourage Congress to take steps to pass two bi-partisan measures:

1. ***The Incorporation Transparency and Law Enforcement Assistance Act (H.R. 4450)***, which would end hidden company ownership to prevent corrupt money from entering the U.S. It would require updated disclosures about the real people who own or control American companies to be filed at the time of incorporation and made available to law enforcement upon a summons or subpoena. This will provide law enforcement with critical information that they need to combat corruption and other types of criminal activity.
2. ***The Global Magnitsky Human Rights Accountability Act (H.R. 624)***, which would deny human rights violators and the corrupt entry to the U.S. and access to U.S. property transactions.

We also support the following:

1. ***Increase transparency in the contracting process among legal entities that receive federal funds*** through an open contracting system that includes the publication of beneficial ownership information to keep U.S. spending from contributing to or exacerbating serious human rights abuses and corruption.
2. ***Implement beneficial ownership transparency requirements for real estate, escrow agents, and luxury goods.*** The New York Times' series, "Towers of Secrecy", illustrated the ease with which it is possible to spend millions of dollars on anonymous property transactions facilitated by the real estate industry. The effects of such secrecy go far beyond merely protecting the identities of the ultimate owners of real estate. Anonymous companies allow corrupt politicians and organized crime to transfer and hide illicitly acquired funds worldwide, and fuel an abuse of power and a culture of impunity. The real estate sector is well positioned to detect schemes that use purchases of land or buildings to conceal the true source, ownership, location or control of funds generated illegally, as well as the companies involved in such transactions.
3. ***Increase resources for law enforcement cooperation to fight corruption.***
4. ***Make the transparent and responsible management of natural resources an integral part of U.S. foreign policy objectives.*** Specifically, the State Department should proactively work to improve natural resource governance in resource-rich countries by promoting transparency across the value chain, including with revenues, license allocations, contracts, and beneficial ownership. Efforts should focus on increasing the capacity of resource-rich governments to negotiate better natural resource deals and improving governance of state-owned companies and natural resource funds. The State Department should work closely with the World Bank and other donors to provide the support and pressure needed, including through the State Department's Energy Governance and Capacity Initiative, which focuses on improving energy governance in emerging oil and gas producing countries. The U.S. should also effectively implement the U.S. Extractive Industry Transparency Initiative to lead by example and improve U.S. natural resource governance.

5. ***Protect human rights and support civil society in holding governments to account for governance of the natural resources sector.*** In some countries, particularly countries with autocratic regimes and weak rule of law, civil society experiences serious challenges in its ability to operate freely and speak out against corruption and mismanagement of natural resources. The State Department should develop a proactive strategy for supporting and building civil society's capacity on these issues and help address the grave risks that civil society faces in resource-rich countries.

Thank you for inviting me to testify today. We look forward to working with you and your colleagues to identify ways to prevent the U.S. from enabling corruption and hold individuals and companies accountable for their actions. We are pleased the UK Anti-Corruption Summit brought us closer to transforming corruption into a mainstream issue and that Congress is continuing the momentum by hosting this important hearing.

About Global Witness

Many of the world's worst environmental and human rights abuses are driven by the exploitation of natural resources and corruption in the global political and economic system. Global Witness is campaigning to end this. We carry out hard-hitting investigations, expose these abuses, and campaign for change. We are independent, not-for-profit, and work with partners around the world in our fight for justice.

Mr. MCGOVERN. Well, thank you very much. And I did see that 60 Minutes show, by the way. It was outrageous.

Mr. Murray.

STATEMENT OF MATTHEW MURRAY, ESQ., INTERNATIONAL LAW EXPERT

Mr. MURRAY. Thank you, Mr. Chairman. It is my distinct honor to participate in this hearing today, and to have an opportunity to discuss how to improve accountability for corruption and human rights. It is a privilege to be a member of this esteemed panel of experts. And I also want to thank my colleague, Andrew Spalding from the University of Virginia Law School, with whom I have been conducting research of the ideas that I would like to present to you today.

As you know, both corruption and human rights are matters of increasing global concern and both are subjects of international law. It has long been agreed that no single nation can either uphold human rights or fight corruption effectively without the cooperation and support of other nations. Under prevailing international law, many nations have signed and are obligated to implement treaties and conventions, both to protect human rights, and to criminalize acts of official corruption, yet the anticorruption architecture is not working as planned, whether to assure effective enforcement or protect the victims, and there is increasing concern that official corruption provides both the incentive and means to violate human rights. The abuse of public office for private gain, as corruption is now defined, often results in patterns of repeated violations of human rights, as you have elucidated and as the witnesses have testified to.

Mr. Chairman, the challenge that you and the Human Rights Commission pose today, how to strengthen accountability for corruption and human rights, raises a fundamental question of whether and how international law links these two goals effectively. And my goal today is to identify what you might deem a gap in the architecture on this subject. And I will make the case, further, that in order to increase accountability for both corruption and human rights, we must first place anticorruption norms on a new footing, on a stronger conceptual foundation, and elevate enforcement as a matter of public policy, and focus enforcement on improving the lives of corruption victims. I will present the case that in order to fill this accountability gap, freedom from official corruption should, in fact, be established as a fundamental and inalienable human right.

First let me describe for a minute what is the current interplay of these two areas of law. As a starting premise, we know that the global community has recognized corruption involving public officials as a principal cause of human suffering, of depravation, but not as a violation of human rights. The major rights conventions, including the United Nations Universal Declaration of Human Rights and regional conventions that have been adopted in Europe, the Americas, Africa and Asia do not include freedom from corruption among their enumerated rights. In addition, the prevalent international anticorruption agreements, such as the United Nations Convention Against Corruption and the OECD's Antibribery Convention, do not frame official corruption as a rights violation.

Mr. Chairman, instead, as you and the witnesses have pointed out today, official corruption is typically understood as a means by which other established human rights are violated. As stated by former head of the United Nations, Kofi Annan, in the forward to the United Nations Convention Against Corruption: Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, and allows organized crime, terrorism, and other threats to human security to flourish.

When adopted in 2005, the United Nations Convention Against Corruption actually

went well beyond previous international agreements, to require signatories to criminalize money laundering, embezzlement, and other forms of corruption, but it did not embrace freedom from corruption as a human right.

In the meantime, to facilitate political freedom and economic development, both the United Nations and regional, and multilateral bodies have established a range of other human rights, including first generation civil and political rights, such as freedom of speech and religion, to second generation economic and social rights, such as the right to property, education, and health, and beyond. And these bodies seek to uphold these rights by, among other things, requiring governments to adopt and enforce laws that prohibit corruption. They have not, again, however, recognized freedom from corruption itself as a human right.

In my view, and in the view of my colleague, Andy Spalding, there is a strong case that freedom from corruption is an inalienable universal right belonging to all humans. Though current international treaties do not recognize the right, legal philosophers have long acknowledged that these instruments are but one of several bases for making a rights argument.

There are three legal lines of reasoning that argue for considering the creation of a stand-alone right. First, and historically the most foundational, is natural law, particularly the writings of John Locke. And though Locke did not use the term "corruption," his concern with protecting citizens from the abuse of public office pervaded his rights theory. What Locke calls liberty is to have a standing rule to live by, common to everyone of that society, and made by the legislative power, not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man; that is, our natural right to liberty can only exist where government exists, and its officials do not abuse their public office for private gain, where they do not act corruptly, in other words. So Locke defines tyranny as, quote, "making use of the power anyone has in his hands, not for the good of those who are under it, but for his own private gain and separate advantage." When he does that, he is describing today what we call official corruption.

Now, this distinctly Anglo American tradition could not provide the basis, the sole basis, anyway, for a universal human right. Thus, a second line of argument, which is very promising as a basis for identifying the existence of a human right is cross-cultural research that discovers fundamental values shared by all cultures, or what are called cross-cultural universals. In our research, we have discovered that in such diverse traditions as East Asian Confucianism and Middle Eastern Islamic law, freedom from corruption is actually deemed a first principle of good governance, and indeed, it may be one of the various candidates for a universal moral principle, one that all persons have by virtue of being human and can agree to. So picture, as you may, all the disagreements that have ensued over other rights, which are sometimes deemed to be Western and formed mainly by Western liberalism, and picture a discussion among people representing these other traditions and Western liberals, and I think what you would find is a compelling level of agreement that no one really should be allowed to steal from citizens if they are acting in a public capacity.

And then, finally, a third line of argument is that despite controversy, the international rights regime has formed a human right to enjoy possession of one's property. Though this right stems in part from Western philosophy, including Locke's right to liberty, it has increasingly been embraced as an international norm, starting with the Universal Declaration of Human Rights in 1948, a right to property has since been adopted in one form or another in the human rights agreements of the regions of Europe, Africa, and the Americas.

Generally, the right is not absolute, and the state has a right to limit it, but it entitles individuals to private property and provides certain protections. And so a good example of this is that in 1952, after much debate, the Council of Europe amended the European Convention on Human Rights to provide for the peaceful enjoyment of one's possessions

under Protocol I, Article 1. The European Court of Human Rights, which is one of the most active international bodies that actually hears cases on human rights, has since adjudicated thousands of individual claims against national governments under Protocol I, and a careful reading of these cases will reveal that many of these property cases are actually cases of corruption where property is being expropriated or extorted by a government official, and the citizen is bringing a claim at the ECHR to recover the property.

So in summary, I think that this is a way to focus more attention on filling this accountability gap. A rights paradigm could increase political will to take the difficult steps required by both government and by citizens to counter corruption. Deeming corruption a rights violation gives international and domestic laws greater normative weight, heightening their importance in public policy. Rights violations have long been understood as more egregious, and a higher enforcement priority than torts or even crimes, and so rights violations are more resistant to trade-offs, or as the prominent legal philosopher Ronald Dworkin famously said, "rights are trump."

So acknowledging a universal human right to be free from corruption could effectively counter the most oft heard objection to international anticorruption initiatives, that corruption is somehow cultural. It could provide a basis for all citizens to bring corruption cases, not only in their own countries, but in international tribunals that could be established in the future to adjudicate these issues, such as special tribunals that are being set up in various countries to hear and adjudicate cases of corruption.

I will submit the remainder of my statement for the record. And, again, I appreciate the opportunity to speak to you and present this case today.

[The statement of Mr. Murray follows:]

“Corruption and Human Rights—Improving Accountability”

**Testimony Before
The Human Rights Commission
United States Congress
June 16, 2016
Matthew H. Murray, Esq.***

Introduction

Thank you, Chairman McGovern. It is my distinct honor to participate in this hearing today and to have an opportunity to discuss how to improve accountability for corruption and human rights. It is a privilege to be a member of this esteemed panel of experts. I also want to thank my colleague Andrew Spalding from the University of Richmond Law School, with whom I have been conducting research and development of the ideas that I would like to present to you today.

As you know, both corruption and human rights are matters of increasing global concern; both are subjects that are treated by international law. It has long been agreed that no single nation can either uphold human rights or fight corruption effectively without the cooperation and support of other nations. Under prevailing international law, many nations have signed and are obligated to implement treaties and conventions both to protect human rights and to criminalize acts of official corruption.

Yet, the anti-corruption architecture is not working as planned whether to assure effective enforcement or to protect the victims. And, there is increasing concern that official corruption provides both the incentive and the means to violate human rights. The abuse of public office for private gain – as corruption is now defined – often results in patterns of repeated violations of human rights.

Mr. Chairman, the challenge that you and the Human Rights Commission pose today -- how to strengthen accountability for corruption and human rights -- raises a fundamental question of whether and how international law links these two goals effectively? My goal today is to identify what might be deemed an “accountability gap” in the current international legal architecture on this subject.

I will make the case that in order to increase accountability for both corruption and human rights, we must first place anti-corruption norms upon a stronger conceptual foundation, elevate enforcement as a matter of public policy, and focus enforcement on improving the lives of corruption’s victims. To fill the accountability gap, freedom from official corruption should be established as a fundamental and inalienable human right.

The Relationship in International Law Between Corruption and Human Rights

First, let me start by describing the current state of interplay between the two areas of international law. As a starting premise, the global community now widely recognizes corruption involving public officials as a principal cause of human suffering and deprivation, but not as a violation of a human rights. The major rights conventions, including the *United Nations Universal Declaration of Human Rights* and regional conventions adopted in Europe, the Americas, Africa and Asia, do not include freedom from official corruption among their enumerated rights.

In addition, the prevalent international anti-corruption agreements, such as the *United Nations Convention Against Corruption* and the *Organization for Economic Co-operation and Development Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions*, do not frame official corruption as a rights violation.

Mr. Chairman, instead, as you and the hearing witnesses have pointed out today, official corruption is typically understood as a means by which established human rights are violated. As stated by former head of the United Nations Kofi Annan in the Forward to the *United Nations Convention Against Corruption* (UNCAC):

Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.

When adopted in 2005, the *United Nations Convention Against Corruption*, went beyond previous international agreements to require signatories to criminalize not only basic forms of corruption such as bribery and embezzlement of public funds, but also trading in influence and concealment and laundering of the proceeds of corruption. The document also makes references to various discrete human rights, and highlights the collateral impact of anti-corruption enforcement measures on other rights.

As a sign of how dynamic the interplay between human rights and anti-corruption law can be, to facilitate political freedom and economic development, both the United Nations and regional multilateral bodies have continued to expand upon the “first-generation” civil and political rights, such as freedom of speech and religion. They have created “second generation” economic and social rights, such as rights to property, education, and health, and beyond. These bodies seek to uphold these rights by, inter alia, requiring governments to adopt and enforce laws that prohibit corruption. They have not, however, recognized freedom from official corruption itself as a human right.

Framing Corruption as a Direct Violation of a Human Right

Not permit me to return to my thesis, which is that there is a strong case that freedom from corruption is an inalienable, universal right belonging to all humans. Though current international treaties do not recognize the right, international law experts have long acknowledged that these instruments are but one of several bases for making a rights argument. And, there are at least three legal lines of reasoning that argue for considering creation of a stand-alone right.

First, and historically the most foundational, is natural law, particularly the writings of John Locke. Though Locke did not use the term corruption, the concern with protecting citizens from the abuse of public office pervaded his rights theory.

What Locke calls liberty is “to have a standing rule to live by, common to every one of that society, and made by the legislative power . . . not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man.” That is, our natural right to liberty can only exist where government exists and its officials do not abuse their public office for private gain, where they do not act corruptly. Locke defines tyranny as “making use of the power any one has in his hands not for the good of those who are under it, but for his own private, separate advantage,” he is describing what we today call official corruption.

This distinctly Anglo-American intellectual tradition, however, cannot provide the sole basis for a universal human right. Thus, a second promising basis for identifying the existence of a human right is cross-cultural research that discovers fundamental values shared by all cultures, or “cross-cultural universals.” In such diverse traditions as East Asian Confucianism, and Middle Eastern Islamic law, freedom from corruption is deemed among the first principles of government. Indeed, of the various candidates for a universal moral principle, one that all persons have by virtue of being human, the freedom from corruption may well be one of the strongest and most fundamental.

Third, despite controversy, the international rights regime has formed a human right to enjoy possession of one’s property. Though this right stems in part from western philosophy, including Locke’s right to liberty, it has increasingly been embraced as an international norm. Starting with the UDHR in 1948, a right to property has since been adopted in one form or another in the human rights agreements of the regions of Europe, Africa and the Americas. Generally, the right is not absolute and the state has a right to limit it; but, it entitles individuals to private property and provides certain protections.

In 1952, for example, after much debate, the Council of Europe amended the European Convention on Human Rights (ECHR) to provide for the “peaceful enjoyment of one’s possessions” under Protocol 1, Article 1. The European Court of Human Rights has since adjudicated thousands of individual claims against national governments under Protocol 1, Article 1. A careful reading of these cases shows citizens bringing claims against public officials for corruptly taking or expropriating private property. The standard set by the ECHR invites us to consider how establishing freedom from corruption as a stand-alone right would help protect other human rights, including property rights.

A Rights Paradigm Increases Accountability

A “rights paradigm” would increase political will to take the difficult steps required by both government and citizens to counter official corruption in important ways.

First, deeming corruption a rights violation gives international and domestic laws greater normative weight, heightening their importance in public policy. Rights violations have long been understood as more egregious, and a higher enforcement priority, than torts or even crimes. Rights violations are “more resistant to trade-offs,” or, as the prominent legal philosopher Ronald Dworkin famously said, rights are “trumps.”

Second, acknowledging a universal human right to be free from corruption effectively counters the most oft-heard objection to international anti-corruption initiatives: that corruption is cultural.

Third, it could provide a basis for citizens to bring corruption cases not only in their own countries but in international tribunals that could be established in the future to adjudicate these issues, such as special tribunals that are being set up in various countries to hear and adjudicate cases of corruption.

Time to Re-Design the International Legal Architecture

In summary, Mr. Chairman, it is time to re-evaluate the argument that it is more constructive to promote anti-corruption as a means to protect other human rights than to create a stand-alone right. In fact, as mentioned, the Universal Declaration of Human Rights establishes a range of human rights, including civil and political rights as well as economic, social and

cultural rights. This inclusive approach was based on the principle of indivisibility—that by combining the different rights, they could be more successfully upheld. It has since become widely recognized that better enforcement of one set of human rights is imperative to protect other rights and freedoms.

A freedom from corruption would have an essential role in upholding and enforcing other human rights. And here I am not talking solely about protections against torture, slavery, trafficking and other basic human rights. In societies where corruption is endemic, it can permeate every dimension of daily life—from obtaining a public education, to seeing a doctor, to obtaining a driver’s license, to starting a business, to paying taxes.

Unless and until freedom from official corruption is ensconced as a stand-alone human right, however, the state of governance envisioned in the UDHR, UNCAC and other human rights and anti-corruption conventions will remain elusive.

Conclusion

In summary, reframing corruption as a rights violation would send an unequivocal message to both the victims of official corruption and the perpetrators: that corruption is neither cultural nor human nature; that the state might violate that right but cannot take it away; and that the vigorous enforcement of anti-corruption measures is not only possible, but essential.

Thank you again Mr. Chairman for this opportunity to testify before the Human Rights Commission and for continuing to highlight and elevate this important area of public policy.

Mr. MCGOVERN. Well, thank you very much.
And Judge Wolf.

STATEMENT OF HON. MARK L. WOLF, CHAIR, INTEGRITY INITIATIVES INTERNATIONAL, AND AUTHOR OF "THE CASE FOR AN INTERNATIONAL ANT-CORRUPTION COURT"

Judge WOLF. Congressman McGovern, thank you very much, not just for this opportunity to speak again before the Lantos Human Rights Commission, but for your kind words of how I have encouraged your interest in this area. We both --

Mr. MCGOVERN. We wouldn't be here if it wasn't for you, Judge. I just want you to know that, you know, and so I want -- this is what is going to raise this issue in this Commission. And also I appreciate all the work of this panel. I said at the beginning, I mean it, I mean, all of you have really done incredible work in this area. And, you know, if I were -- you know, if I somehow had a magic wand to advise the President, what I would simply say, you ought to get Justice, Treasury, State together and bring a group of you together to help advise them on how they could beef up their anticorruption laws and how they could be more effective in fighting corruption, because the more you look into this, the more you see how it is related to all these other terrible things, from oppression, to wars, to you name it. So we need to figure out, after Judge Wolf testifies, as to how we can elevate this thing a little bit more, but let's let the Judge -- I didn't mean to interrupt you.

Judge WOLF. Well, you interrupted me as I was about to compliment you, so hopefully you will regret it even more, but you and I are both from Massachusetts. As you know, across from the State House is the Robert Gould Shaw Memorial, a magnificent sculpture by Saint-Gaudens. And in inaugurating that sculpture, William James actually talked about corruption and he talked about the bravery of those -- Shaw, of course, led the 54th regiment, the white Brahmin officer with the black soldiers memorialized popularly in the movie *Glory*, but William James spoke, and he said of the 500 who would have the courage to storm the barricades, not one would have the lonely kind of courage necessary to confront an enthroned abuse.

And I think, perhaps at times you have felt lonely, perhaps at times I have felt lonely. I think you and I, in the last couple of years, have had the great good fortune to be lonely together, and we are a lot less lonely, as I will discuss in these remarks, and as the other participants today exemplify.

The Lantos Human Rights Commission has been at the vanguard in recognizing the integral relationship between grand corruption, the abuse of public office for private gain by a nation's leaders, the most egregious violations of human rights, and also the necessity to find a way to use the criminal law to punish and then deter the perpetrators of both grand corruption and egregious violations of human rights. There is a tremendous, as I will describe, implementation grab.

In saying, as some of my colleagues today have said, that corruption is not a victimless crime, in this room, I am preaching to the choir, but it is worth noting that these are not idiosyncratic views that you and I and the other speakers today share. Several years ago in 2013, the then United Nations High Commissioner for Human Rights, Navi Pillay, said that corruption kills. The money stolen through corruption every year is enough to feed the world's hungry 80 times over. Corruption denies them their right to food, and, in some cases, their right to life.

There are many other examples of how corruption has fatal consequences. In 2014 in Sierra Leone, audits found that one-third of the funds that were to be dedicated to combating the scourge, the urgent scourge of Ebola could not be accounted for, but they did find some of those funds going to the health officials who were supposed to be administering them. And the auditors expressed the understandable obvious concern that

this might have caused the unnecessary loss of life.

Mr. Sifton mentioned Angola. Angola has -- Nicholas Kristof wrote a series of columns a year ago, I think, on Angola and explained how it is an incredibly wealthy country with diamonds and oil and other riches. It is first in the world in the rate at which its children do not live to the age of 5, but the president's daughter, Isabelle De Santos, is reliably reported to be worth \$3 billion. So this, as we all know, grand corruption is not a victimless crime.

It exists because of the culture of impunity in many countries throughout the world, where the kleptocratic rulers do not fear prosecution or punishment, because they control the police, they control the prosecutors, and as a judge, I say with particular regret, they direct the courts, and they are not going to permit the administration of justice to prosecute and punish their colleagues, their families, their friends, or often, indeed, themselves.

This grand corruption causes irreparable harm to human rights, harm that cannot be repaired after the fact. If a child starves to death, nothing can compensate for that. If a child doesn't get education, their right to life, liberty, and the pursuit of happiness is injured forever. If any person dies from a lack of medical care, that is a form of irreparable harm. And as has been mentioned several times, the corrupt governments perpetuate themselves, corrupt leaders perpetuate themselves by not permitting free speech, by not permitting the operation of true democracy, and human rights, free expression, and self-governance are denied.

As I said, these irreparable harms cannot be dealt with adequately after the fact. They have to be deterred and diminished by the credible threat of prosecution.

The last time I sat with my friend, Matthew Murray, was at the London summit. We were both there last month. And I think when I say we are getting less lonely, I think the Summit did reflect an increasing international understanding that grand corruption, human rights, and world peace and security are integrally linked.

The Department of State is not here today, but Secretary Kerry spoke to this at the Summit. In his opening remarks, he noted that 2 billion children under age 15 need to go to school, which in many countries will not be built because of the, quote, "criminal syndicates," end quote, and the, quote, "supposed leaders of nations," end quote, who are stealing billions of dollars and laundering them throughout the world.

Secretary Kerry went on to say other things that are pertinent for our purposes today. He said that the quality of governance is no longer a domestic concern; rather, it is everybody's responsibility to hold perpetrators accountable.

The Summit involved certain declared commitments. The Summit declaration pledged the 40 nations who were there to pursue and punish perpetrators of grand corruption, and it noted that this is vital to protecting human rights. It also urged nations, I think implicitly, recognizing the inadequacy of even the energetic efforts that so many individuals and institutions are engaged in, it urged exploration of innovative solutions to these problems.

The Summit focused, particularly in its communique, on certain action items: improving the transparency of beneficial ownership; improving the coordination of international or national law enforcement organizations to follow the money and develop evidence of corruption; the need to protect whistleblowers and encourage and protect investigative journalists; and to improve asset recovery.

All of these things are valuable, but there is reason to be concerned. First, there were 40 nations at the Summit, but they didn't include many of the nations who are regarded as the most corrupt in the world. In addition, it is not clear whether the pledges made by the 40 countries who were there will prove to be rhetoric or whether adequate efforts will be made to assure that they become reality.

I said earlier that it is impossible to deal with the irreparable harms to human rights caused by grand corruption after the fact. Asset recovery is worthy, I support it, but it is

not going to really deter the criminals who lead their countries and are so gravely abusing the human rights of their citizens.

Secretary Kerry in his opening remarks talked about the tens of billions of dollars that have been looted from Nigeria in reference, and I think with pardonable pride, the \$350 million the United States is seeking to have restored to Nigeria. I mean, as a judge, we believe in deterrence, but will the risk of returning a small percentage of stolen assets of a country really deter anybody?

When I had the privilege of speaking before you in November of 2014, Arvind Ganesan from Human Rights Watch came and told the story of Teodoro Obiang of French Equatorial Guinea -- or Equatorial Guinea, who was both the vice-president of the country and the son of the president. The Justice Department sought to recover \$100 million from him and his Michael Jackson memorabilia, which was very precious to him. The case settled for \$30 million and he got to keep the crystal-studded glove somehow.

Asset recovery is important. It is not sufficient, given the gravity of the offenses. Transparency of beneficial ownership is very important, and the improved ability to collect evidence of grand corruption is important too, but it is essential to recognize that those are not ends in themselves. If there is no place to use the evidence to prosecute cases and hold people accountable, it is really fairly futile.

And the media, in the last 10 days alone, illustrates the challenge in many countries. And I will pick two allies of the United States, because they have been in the media. The New York Times, on June 6, reports that Graft fighter in Egypt finds himself a defendant in court because a former judge, who was made the anticorruption czar in Egypt, revealed that, I think it was \$72 billion had disappeared, and now he is being prosecuted for disturbing the peace.

Or in Turkey, The Economist this week reports that there is a prosecution in New York of a gold trader for seeking to evade sanctions on Iran in which he allegedly bribed ministers in Turkey, our ally. When these ministers were charged with taking bribes several years ago in Turkey, the prosecutor was removed. He is now being prosecuted for attempting a coup, and this trader and those ministers were cleared, but now we have sufficient evidence in the United States to indicate, to suggest that he shouldn't have been.

This exists because the Summit recognized the centrality of the U.N. Convention Against Corruption, the UNCAC. The U.N. Convention Against Corruption requires the 178 countries who were parties to it to have laws that criminalize bribery, extortion, misappropriation of national resources. The problem is, as Egypt and Turkey illustrate, they are not enforced.

The Transparency International studied this in 2013, and noted that the international community focuses excessively on whether the statutes enacted are on the books, yet insufficiently on whether they are enforced. And that is what I have observed as well.

The laws exist to hold high officials accountable. They are on the books in Russia and China and Nigeria and everywhere else we might be interested in, but they are not enforced. And it is for that reason that I have, and not just I now, have advocated the creation of an international anticorruption court separate from but similar to the international criminal court, a court that would operate on the principle of complementarity. If a country which has these laws on its books is unwilling or unable to enforce them against its highest officials, they would be vulnerable to prosecution in the international anticorruption court. This, I submit, would be the quintessential innovative solution that the 40 countries at the Summit dedicated themselves to exploring.

This proposal, in the less than 2 years since I published my Brookings article and Washington Post piece, have generated a lot of support. This proposal is strongly supported by the United Nations High Commissioner for Human Rights, Prince Ra'ad

al-Hussein, who completely recognizes that grand corruption and the worst violations of human rights are two sides of the same coin, crimes committed by the same people. Human Rights Watch was, I was really gratified to learn several years ago, very early into this recognition, and that is gratifying, and I look forward to strengthening our collaboration. I have had many good discussions with Global Witness, including in London next month. Global Parliamentarians Against Corruption supports this, Transparency International supports the international anticorruption court.

Leading international prosecutors, like Justice Richard Goldstone of South Africa, Luis Moreno Ocampo of Argentina, and Jose Ugaz of Peru are also supporters. And perhaps even more significantly, inspiring and courageous young people around the world support this concept. I was sitting next to a young man last night at dinner from Turkey who, after he heard about this for 1 minute, said, We need this for Turkey. How can I help? I have an email from him that came at 7 o'clock this morning. Sharon Suchi is here today from Kenya. She works with John Githongo, who is an international hero in combating corruption. She wanted to get to Washington in time for this hearing, which is deeply, deeply gratifying.

I have discussed this proposal around the world. And now, as I said, we are getting less lonely, because an organization has been formed, Integrity Initiatives International, triple I, to institutionalize the campaign for the international anticorruption court, to support related measures, and to try to forge a network, or network of networks of these young people who are dedicated to combating corruption in their own countries and in the world.

We are in the process of planning a meeting at the Salzburg global seminar that will be keynoted by the United Nations High Commissioner for Human Rights, which will bring together senior statesmen, leaders of civil society, and younger people to discuss in depth the integral relationship between grand corruption, abuses of human rights, and this proposal for an international anticorruption court, which I hope and trust will lead to a formal international campaign to create the court.

So I commend you and the Lantos Human Rights Commission for continuing to focus on the relationship between grand corruption, abuses of human rights, and particularly, the need to strengthen the capacity of the international community to prosecute and punish the perpetrators of both.

In 2002, after very long and arduous effort, the evils of genocide persuaded the international community to create the International Criminal Court. I submit that it is now time to recognize that the comparable consequences of grand corruption justify and indeed necessitate the creation of an international anticorruption court.

Thank you very much.

[The statement of Judge Wolf follows:]

Tom Lantos Human Rights Commission Hearing

Corruption and Human Rights: Improving Accountability

June 16, 2016

*Statement of Honorable Mark L. Wolf, Chair, Integrity Initiatives International.*⁹

Chairman McGovern, Chairman Pitts, and Members of the Tom Lantos Human Rights Commission:

Thank you for the privilege of appearing again before the Lantos Human Rights Commission to address "Corruption and Human Rights: Improving Accountability."¹⁰ The Commission has been in the vanguard in recognizing the integral relationship between "grand corruption" – the abuse of public office for private gain by a nation's leaders – and the most egregious violations of human rights, as well as the crucial need to deter both by assuring that perpetrators face the credible threat of punishment for their crimes. The fact that you have invited me, as Chair of Integrity Initiatives International ("III"), to appear with representatives of Human Rights Watch and Global Witness, among others, exemplifies that important understanding.

As you know, countries recognized as the world's most corrupt – including Somalia, Afghanistan, Sudan, Iraq, and Syria – regularly violate the rights of their citizens. As then United Nations High Commissioner for Human Rights Navi Pillay said, in 2013: "Corruption kills ... The money stolen through corruption every year is enough to feed the world's hungry 80 times over, ... corruption denies them their right to food, and, in some cases their right to life."¹¹

Grand corruption also has fatal consequences in other ways. For example, in Sierra Leone one-third of the funds allocated to combat Ebola in 2014 could not be accounted for, some of those funds were improperly paid to health officials personally, and auditors expressed the obvious concern for the possible "unnecessary loss of life."¹² Similarly, as Nicholas Kristof wrote in a series of articles in the New York Times last year, Angola is "a

⁹ Mark L. Wolf is a Senior United States District Judge for the District of Massachusetts, the Chair of Integrity Initiatives International, and a Non-Resident Distinguished Fellow of the Woodrow Wilson Center. Prior to his appointment as a judge in 1985, he served as a Special Assistant to United States Attorney General Edward H. Levi (1975-1977) and as the chief federal public corruption prosecutor in Massachusetts.

¹⁰ Attached is my November 13, 2014 statement to the Lantos Human Rights Commission concerning "The Case for an International Anti-Corruption Court."

¹¹ Navi Pillay, High Commissioner for Human Rights, Opening Statement To OHCHR Panel on "The Negative Impact of Corruption on Human Rights" (Mar. 13, 2013), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13131&LangID=e#sthash.dys0eOCR.dpuf>.

¹² Lisa O'Carroll, "Sierra Leone investigates alleged misuse of emergency Ebola funds," The Guardian (Feb. 17, 2015), <http://www.theguardian.com/world/2015/feb/17/sierra-leone-investigates-alleged-misuse-of-emergency-ebola-funds>.

country laden with oil, diamonds, Porsche driving millionaires and toddlers starving to death."¹³ Angola is first in the world in the rate at which children die before age five,¹⁴ while the daughter of Angola's President, Isabel dos Santos, is reportedly worth \$3 billion dollars.¹⁵

Comparable violations of human rights occur in the many countries in which corrupt leaders can extort bribes and misappropriate their nation's resources with impunity because they control the police, the prosecutors, and the courts. Irreparable harm is done whenever a child starves to death or is denied an education, when a person dies from inadequate medical care, or when anyone is denied the freedom of speech that corrupt leaders regularly suppress.

As these examples illustrate, it is impossible to deal adequately with grand corruption, and the abuses of human rights integrally related to it, after they occur. Rather, the credible threat of prosecution and punishment is essential to deter and diminish grand corruption. Therefore, former High Commissioner Pillay was also right in asserting, in 2013, that "[t]here is an urgent need to increase synergy between efforts to implement the United Nations Convention Against Corruption ("UNCAC") and international human rights conventions."¹⁶

The May 2016 London Anti-Corruption Summit reflects the increased international understanding of the close connection between grand corruption and abuses of human rights, and the need to strengthen the capacity of the criminal law to address both. In convening the Summit, Prime Minister David Cameron emphasized that: corrupt governments syphon off resources that should be devoted to the health and education of its citizens, generate migrants drowning in the Mediterranean, and convert their citizens into constituents for terrorists.¹⁷

Secretary of State John Kerry has, frequently and urgently, also emphasized the intimate relationship between corruption and the denial of human rights. In his remarks at the Summit Secretary Kerry noted that 2 billion children under age 15 need to go to schools which in many countries will not be built because of the "criminal syndicates" and "supposed leaders of nations" who are stealing billions of dollars and laundering them

¹³ Nicholas Kristof, "The Deadliest Country for Kids," The New York Times (Mar. 19, 2015), <http://www.nytimes.com/2015/03/19/opinion/nicholas-kristof-deadliest-country-for-kids.html?emc=eta1&r=0>.

¹⁴ Id.

¹⁵ Nicholas Kristof, "Two Women, Opposite Fortunes," The New York Times (Mar. 21, 2015), <http://www.nytimes.com/2015/03/22/opinion/sunday/nicholas-kristof-two-women-opposite-fortunes.html?emc=eta1&r=0>.

¹⁶ Pillay, supra note 3.

¹⁷ David Cameron, United Kingdom Prime Minister, Address at the Lee Kuan Yew School of Public Policy in Singapore (Jul. 28, 2015), <https://www.gov.uk/government/speeches/tackling-corruption-pm-speech-in-singapore>.

throughout the world.¹⁸ Drawing on his experience as a prosecutor, including in the Bank of Commerce Credit International ("BCCI") case, Secretary Kerry concluded that "accountability under the law" – meaning the criminal law – "is so critical."¹⁹

As Secretary Kerry, among many others, has also recognized, indignation at grand corruption is destabilizing many nations – such as Egypt and Ukraine – and in the process creating grave dangers for international peace and security. Therefore, as Secretary Kerry has said, "the quality of governance is no longer just a domestic concern."²⁰ Rather, "it is everybody's responsibility to . . . hold perpetrators accountable."²¹

The London Summit was a milestone. More than 40 countries participated. They endorsed a Global Declaration Against Corruption that commits each of them to the proposition that "[t]he corrupt should be pursued and punished."²² In the Summit Communique, those nations recognized that "[t]ackling corruption is vital for . . . protecting human rights."²³ Implicitly recognizing that existing institutions and efforts have not been adequate, the participating governments committed themselves to "exploring innovative solutions" to combat corruption.²⁴

In that Communique, the participants in the Summit also pledged: to improve the transparency of beneficial ownership to make it harder for the perpetrators of grand corruption, among others, to mask their crimes; to improve the capacity of the international community to cooperate in investigating the flow of the fruits of corruption; to provide better protections to whistleblowers and investigative journalists who expose corruption; and to pursue asset recovery more energetically and effectively.

These pledges are promising. However, it is uncertain whether the potential of the Summit will be realized. Many countries with the most corrupt leaders did not participate in the Summit. It is not certain whether all of the nations that did participate will honor their undertakings.

Even improved asset recovery is unlikely to be effective in deterring grand corruption. Only a fraction of looted assets and bribes are ever recovered.²⁵ In any event,

¹⁸ John Kerry, United States Secretary of State, Address to London Anti-Corruption Summit (May 12, 2016), <http://www.state.gov/secretary/remarks/2016/05/257130.htm>.

¹⁹ Id.

²⁰ John Kerry, United States Secretary of State, Remarks at the World Economic Forum (January 22, 2016), <http://www.state.gov/secretary/remarks/2016/01/251663.htm>

²¹ Id.

²² United Kingdom Office of the Prime Minister, "Global Declaration Against Corruption" (May 12, 2016), <https://www.gov.uk/government/publications/global-declaration-against-corruption/global-declaration-against-corruption>.

²³ Id.

²⁴ United Kingdom Office of the Prime Minister, "Anti-corruption Summit | London 2016 – Communique", ¶13 (May 12, 2016), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522791/FINAL_-_AC_Summit_Communique_-_May_2016.pdf.

²⁵ See Kerry, supra note 10 (the United States is seeking to recover \$350 million of the tens of billions of dollars stolen from Nigeria); Arvind Ganesan, Business and Human Rights Director, Human Rights Watch, Oral

asset recovery is not a means of incarcerating corrupt leaders and creating opportunities for the election of honest successors who will faithfully serve their people.

Most fundamentally, it should be recognized that greater transparency of beneficial ownership, exposure of grand corruption by journalists and whistleblowers, and improved international cooperation in investigating the fruits of grand corruption, while necessary, are not ends in themselves. To deter and diminish grand corruption, there must be an impartial court in which corrupt leaders can be held accountable.

The Summit's recognition of the "centrality of UNCAC"²⁶ is interesting and important. 178 countries are parties to the Convention. As required by UNCAC, almost all of them have laws criminalizing extortion, bribery, and money laundering. They also have an international legal obligation to enforce those laws against their corrupt leaders. Yet, as explained earlier, grand corruption flourishes in many countries because those leaders control the administration of justice.

In the Summit Communique, the participating nations pledge to implement UNCAC and express support for its implementation review mechanism.²⁷ However, existing laws required by UNCAC have been widely ignored in part because the UNCAC implementation review mechanism was designed to be, and is, very weak.²⁸ As Transparency International found in 2013, the international community has focused excessively on whether the required statutes have been enacted and insufficiently on whether they are actually enforced.²⁹

In the recent weeks alone there have been reports of allies of the United States frustrating investigations of grand corruption and punishing those who exposed it. For example, on June 7, 2016, the New York Times reported that Egypt's anti-corruption czar revealed that endemic graft had cost his country about \$76 billion.³⁰ As a result, he was removed from office and is now being prosecuted for disturbing the peace.³¹ Similarly, the June 11 2016 Economist recounts how the prosecutors in Turkey who developed corruption cases against members the Prime Minister's cabinet in 2013 were removed and are now

Testimony to Tom Lantos Human Rights Commission Briefing: "An International Anti-Corruption Court (IACC) to Mitigate Grand Corruption and Human Rights Abuses" (Nov. 13, 2014), <https://humanrightscommission.house.gov/sites/tlhr.house.gov/files/documents/Remarks%20by%20Arvind%20Ganesan%20%28HRW%29.pdf> (the United States recovered less than half of the many millions of dollars it sought from Teodovia Oblang, the son of the President, and the Vice-President, of Equatorial Guinea).

²⁶ Anti-corruption Summit Communique, supra note 15, ¶128.

²⁷ Id. ¶13.

²⁸ Attached is my June 5, 2015 statement to the United Nations Convention Against Corruption Implementation Review Group explaining the weaknesses in the UNCAC monetary system.

²⁹ Transparency International, UN Convention Against Corruption: Progress Report 2013, 15-16 (2013), available at http://www.transparency.org/whatwedo/publication/un_convention_against_corruption_progress_report_2013.

³⁰ Declan Walsh, "Graft Fighter in Egypt Finds Himself a Defendant in Court," The New York Times (Jun. 6, 2016), http://www.nytimes.com/2016/06/07/world/middleeast/egypt-hisham-geneina-trial.html?_r=0.

³¹ Id.

being prosecuted themselves for allegedly attempting a coup.³² A businessman who was cleared in Turkey of bribing those ministers is now being prosecuted in New York for doing just that.³³

Comparable cases could be cited from many countries, including Russia, where grand corruption is endemic because of the culture of impunity created when the nation's leaders will not permit the prosecution of their colleagues, their families, and, indeed, themselves. The facts that existing laws criminalizing corrupt conduct by a nation's leaders are not enforced in many nations, with devastating consequences for human rights and world peace and security, prompted me, in 2014, to call for the creation of an International Anti-Corruption Court. The IACC would be similar to, but separate from, the International Criminal Court ("ICC"). Like the ICC, the IACC would operate on the principle of complementarity, meaning only officials from countries unable or unwilling to punish grand corruption would be subject to prosecution.

The opportunity afforded to me to brief the Lantos Commission on the proposed IACC in November 2014, proved to be valuable. Although the proposal has evolved, it is still most fully explained in the July 2014 Brookings Institute article that is part of my attached November 2014 statement to the Commission.

Chairman McGovern's attached December 9, 2014 letter to Secretary Kerry urging the President and United States Ambassador to the United Nations to advocate for the creation of the IACC³⁴ was, and remains, much appreciated. Although I understand the United States has not, at least yet, endorsed the IACC, it is gratifying that the Department of State responded that it "welcome[s] the efforts of those who thoughtfully seek new and innovative approaches to addressing the scourge of corruption, including advocates who have proposed the idea of an International Anti-Corruption Court."³⁵

The proposed IACC is the quintessential "innovative solution[]" to combatting grand corruption that the participants in the London Summit pledged to explore. It has already generated substantial support from around the world. It is supported by: the United Nations High Commissioner for Human Rights, Prince Zeid Ra'ad Al Hussein; Transparency International, Human Rights Watch, Global Witness, and Global Parliamentarians Against Corruption; and leading international prosecutors including Richard Goldstone of South Africa, Luis Moreno Ocampo of Argentina, and Jose Ugaz of Peru. Significantly, the proposal is also supported by courageous and inspiring young people from many countries.

The proposal for an IACC has also generated: a seminar at the Harvard Kennedy School of Government; presentations at the World Economic Forum in Geneva, the St. Petersburg International Legal Forum in Russia, the World Forum on Governance in Prague, an international human rights conference in Slovenia, and the United States Department of

³² "Golden squeal: Did officials help evade sanctions?" *The Economist* 55 (Jun. 11, 2016), available at <http://www.economist.com/news/europe/21700422-did-officials-help-evade-sanctions-golden-squeal>.

³³ Id.

³⁴ Letter from James P. McGovern, Co-Chair of the United States Congress Tom Lantos Human Rights Commission, to John Kerry, United States Secretary of State (Dec. 9, 2014), <https://humanrightscommission.house.gov/sites/tlhrc.house.gov/files/documents/20141209%20TLHRC%20to%20Kerry%20on%20IACC.pdf>.

³⁵ See attached March 13, 2015 Letter from Julia Frifield, Assistant Secretary for Legislative Affairs, United States Department of State, to James P. McGovern, Co-Chair of the United States Congress Tom Lantos Human Rights Commission.

State; and programs at the Woodrow Wilson Center, Columbia University, and Harvard Law School.

In 2016, Integrity Initiatives International, which I chair, was formed to combat grand corruption by: institutionalizing the effort to create an IACC; advocating for the development and enforcement of other measures to punish and deter corrupt leaders; and to forge a network of young people dedicated to fighting grand corruption in their own countries and around the world.³⁶

III is now planning a conference, at the Salzburg Global Seminar in Austria, on "Grand Corruption, Abuses of Human Rights, and the Proposed International Anti-Corruption Court." The Conference will feature the United Nations High Commissioner for Human Rights, and bring together statesmen, leaders of civil society, and younger people from dozens of countries to explore the creation of a coalition to campaign for the IACC.

Again, I commend the Lantos Commission for continuing its focus on the crucial connection between grand corruption and abuses of human rights, and the critical need to strengthen the international community's capacity to assure the prosecution and punishment of the perpetrators of both.

In 2002, after a long and arduous effort, the evils of genocide and other intolerable human rights abuses led to the creation of the ICC. Thank you again for the opportunity to explain why it is time to recognize that the comparable consequences of grand corruption require the creation of an IACC.

³⁶ Additional information concerning III can be found on its website, integrityinitiatives.org.

Mr. MCGOVERN. Well, thank you. And I certainly support the creation of an international anticorruption court. The challenges that we have to try to figure out is how do you get there, and as we are trying to get there, what are the steps we need to do in the meantime to get at as much of this corruption as possible.

Now, this may be an unfair observation, this is just my experience as someone who has been in Congress for 20 years, who served as an aid on the Hill for years before that, but my impression of a lot of our anticorruption efforts here in the United States with regard to other countries, it always seems to me that we are more focused on petty corruption than on grand corruption.

Mr. MCGOVERN. And without getting into naming by name the countries that I am thinking of when I am saying that, you know, I have been to a lot of places where, you know, we have been told that this mid-level person, you know, is engaged in practices that, you know, we are going to go after him or her, or this, you know, this group, or this one individual. But in those same countries, we also know that the President of those countries, are, you know, basically the king of corruption, and yet we don't seem to want to, you know, rock the boat. And it seems to me that, you know, that there needs to be a greater emphasis, kind of on the issue of grand corruption, and a better coordination within various administrations. Because to get at this, it is just -- it is not just State Department. It is Treasury Department. It is Justice Department. I mean, there is -- maybe Homeland Security. I mean, there is all kinds of -- and I sometimes wonder whether there is a group that kind of sits around, interagency group, that just deals with this, these issues of corruption. Am I characterizing our role in this unfairly? Anybody who wants to -- since the State Department is not here, we can say whatever we want. You know, I don't know. Ms. Ostfeld.

Ms. OSTFELD. I think you are absolutely right. It is a question of political will and how rare it is to go after a head of state and how we don't do that until that head of state is on his way out. You know, for example, with Libya during the Arab Spring, we had published documentation of where the Libyan investment authority kept its money.

Mr. MCGOVERN. Right.

Ms. OSTFELD. There were banks in the United States. There were banks throughout Europe. As the Arab Spring was happening, all of a sudden, the banks were freezing all of that money because they recognize that some of it was corrupt and for other reasons. But why was it there in the first place?

Mr. MCGOVERN. Right.

Ms. OSTFELD. Like, why aren't we stopping it from getting into our banks in the first place? We wait until, you know, high-level politicians are on their way out to actually do something, so I think you are absolutely right.

Mr. SIFTON. Part of the reason I think they are inactive on heads of state and seniors officials at that level is they are scared. They are scared of instability. It is true that corruption is a national security issue. The Shah of Iran fell because he was corrupt. The Muslim Brotherhood had certain members in the 1980s who became hyper-radicalized and ended up helping start Al Qaeda because they were fighting against corruption in Egypt. And Tunisia started the whole Arab Spring because it was prefaced by the exposure of corruption, which the U.S. knew about.

And the bigger picture, I think, is that governments around the world are getting torn in different, more drastically reactionary, or hyperprogressive directions because electorates, where they exist, have an appetite for the far left and the far right. So this polarization is happening because of corruption. And that emphasizes why the stakes are so high, but it also explains why the State Department and the White House is often so afraid to tackle these issues because when you get into these issues, you are talking about things that make governments fall. And governments falling scares the hell out of them.

But, yeah, you have to do it. You have to fight these things. You have to, and so the key -- what I was going to recommend is that what they ought to do is exposure the tools

that are at their disposal and use them where they can. And I am very -- I am thankful that my colleague from Global Witness mentioned the global Magnitsky law because it needs to be passed. This would be a vital tool. That is one good example.

Mr. MCGOVERN. Okay. Judge.

Judge WOLF. I think there are some limits to what the United States can do alone, but I am hopeful that the equation is changing. I agree with Mr. -- there must be a whole array of considerations that go into deciding which leaders we will support and how much corruption the United States will tolerate, even though we know those leaders are not behaving in a way consistent with our ideals and universal ideals concerning human rights and corruption, but I think the reason that the proposal for an International Anti-Corruption Court has got so much attention is that leaders and others around the world, including Secretary Kerry, I am confident, see that indignation at corruption is destabilizing our allies, among others, Egypt, Nigeria, Ukraine, and then in the process, creating grave dangers for international peace and security. It is those grave dangers that provide -- I mean, that is the purpose of the United Nations is to deal with threats to international peace and security.

But now I think the strategic calculation is changing, or at least certainly should be, and I have read and heard Secretary Kerry talk about this. If you look at Nigeria, for example, and he has discussed it, the constituency for Boko Haram initially was largely people who were indignant about the corruption in the capital and wrapping it in religious rhetoric. Boko Haram was the institution that opposed high-level corruption.

We, understandably, I am sure, would rather not have American troops in Nigeria fighting Boko Haram. You would like to strengthen the Nigerian military. But under the previous President Goodluck Jonathan -- and Secretary Kerry has talked about this at the Summit -- if you gave money to Nigeria, only a tiny fraction of it ever would have gotten to the military. So, now, I think we are in a situation where the United States and other countries have the opportunity to recognize that opposing grand corruption, giving higher priority to protecting human rights is also in the interest of national and international security. And it is this confluence of events that I hope can be capitalized on.

Mr. MCGOVERN. So you know, as a primary author of the Magnitsky Act which was originally global when we first introduced it, but then we had to narrow it down because for some reason, global costs more money. And we are moving hopefully forward with a global Magnitsky bill. The Senate is going to maybe attach it to the defense bill. If not, we can hopefully get them passed in both Chambers and be able to reconcile any differences. But the reason why we did it was not because any administration didn't have the tools to do everything that was in the Magnitsky Act. Any administration, you know, could have publicly shamed people guilty of human rights violation or corruption. They could have frozen their assets in the United States. They could deny them entry to the United States. They could have done all of those things. But the fact was that nobody was doing it. And so we did the Magnitsky Act kind of to force people's hands, and I think it has been an important tool because we have -- we know who some of the really bad players are. And we know a lot about their corrupt activities and, you know, and yes, we can expose them. But there is no consequence in Russia, for example, for those actions.

So therefore, the consequences, you know, you can't have your money in U.S. banks. You can't come here and go to Disney World and you are on our -- you are on one of these lists. So there is a shaming process. And I think that, you know, that is better than nothing.

And hopefully, it is a signal to others that there is a consequence that we do the global Magnitsky, and if we are consistent in its application, you know, that people who are guilty of corruption, you know, at all levels, will realize that there is a consequence. Because I think that is part of the challenge is there has to be a consequence.

Mr. SIFTON. May I just add to that? One of the interesting things about the strategy that the State Department and Treasury might engage with that bill, is that you don't necessarily need to target the head of state.

Mr. MCGOVERN. Right.

Mr. SIFTON. You can be very strategic and target very powerful ministers within a government --

Mr. MCGOVERN. Or wealthy friends of the heads of state.

Mr. SIFTON. And gently create a situation that makes it more likely that there will have to be change at the leadership level. I am thinking, for instance, of Cambodia, where targeted sanctions directed at senior leaders under Hun Sen would, perhaps, lead them to reevaluate whether Hun Sen is the best leader for Cambodia, and push him to hold free and fair elections as opposed to stealing elections like he does every 5 years for the last 25 years.

Mr. MCGOVERN. Yeah.

Judge WOLF. Mr. Chairman, we have been talking about what the executive branch can do.

Mr. MCGOVERN. Right.

Judge WOLF. I think there should be at least equal attention with regard to whether Congress is -- how Congress is doing in this area. The United States, I think, can be very proud of its history with regard to combating international corruption in many respects. I mean, it was Watergate that spawned the Foreign Corrupt Practices Act, so what is -- Watergate is where I came in as an assistant attorney to the United States after Watergate.

We are holding the President of the United States accountable. He wasn't prosecuted, but people around him were and there was a political solution, as you are describing. And because in the United States, corporate law, historically, has been State law, not Federal law, we don't have a good record because of some States on the transparency of beneficial ownership.

Right -- the week before the summit, the President sent proposed legislation to the Congress that would, if enacted, as I understand it, preempt State laws and greatly improve the transparency of beneficial ownership in the United States. In the process, that should make the United States less attractive for looted money, because there will be risks of prosecution here for money laundering or other offenses. But I haven't read that that proposed legislation has obtained any traction, or very many ardent supporters in Congress.

So I think in our system of separation of powers, it is valuable, very valuable for Members of Congress like you to seek to hold the executive branch accountable to see if it is doing as well as it should be doing. And on the other hand, Congress should also be accountable to -- and be evaluated on whether it is acting in the very best interests of the United States in enacting legislation that will give integrity to some of our highest ideals.

Mr. MCGOVERN. Well, I think that is a good point and, you know, Ms. Ostfeld mentioned a piece of legislation that we should pass. And you know, and I -- I think we all -- is it fair to say that everybody thinks if we could have an international anti-corruption court, that that would be a good thing?

So assuming that that is kind of the ultimate, you know, goal we want to recognize the difficulties involved and time required to develop, you know, new kind of treaties, or, you know, agreements like that, you know, it is important to kind of focus on those interim steps of what it is that we could do. And I guess the question is how do we, kind of, I mean, you know, what are those interim steps?

Judge WOLF. Well, actually, if I may, because --

Mr. MCGOVERN. Yeah.

Judge WOLF. -- it may not have been clear enough in my remarks. One thing we could do is seek and seek a coalition to seek strengthening of the monitoring of the U.N.

Convention Against Corruption. The U.N. Convention Against Corruption has 178 parties. They have all pledged to enact, and almost all have enacted laws making bribery and extortion, money laundering, illegal even by their highest officials.

The monitoring system was originally designed to be very weak, and it is very weak. And I testified about this to the UNCAC Implementation Review Group a year ago. I mean, for example, the UNCAC monitors can't go into a country to ask questions unless they are permitted. And their reports are not publicly available -- two small examples of the weakness. So that is on the books. And under international law, the United Nations treaty on conventions, as well as the UNCAC itself, every one of those 178 countries has pledged to make a good-faith effort to implement those statutes, to enforce them. But the international community, and perhaps including the United States, has not sought to have them enforced. If that was a successful effort and every country was enforcing the statutes on its books in an honest and impartial way as we, I think, can be proud of doing in the United States -- not perfectly, but well -- there would be no need for an international anti-corruption court. But some insistence that the pledges 178 countries have made be honored would be a very important next step.

Mr. MCGOVERN. Mr. Murray.

Mr. MURRAY. Mr. Chairman, if I may. Just in countries where corruption is endemic, it can affect virtually every dimension of life, including going to a doctor, getting an operation, getting into a school, getting a driver's license, registering a business. And so in those cultures, there is a need for a systemic strategy to counter a systemic problem. And there is also -- there is a need -- there has been a lot of good research that has been done on how to have such a systemic strategy. You need a compact as between the local civil society and government, and the international community.

So I think it is important to keep the international community in mind here. These are -- both corruption and human rights are understood to be transnational and domestic phenomenon that need enforcement internationally and locally.

So as I indicated in my remarks in my statement, I think it is time from an international perspective to reexamine the whole question of whether fighting corruption should be treated simply as a means of protecting other human rights. And there is plenty of precedent for this.

Mr. MCGOVERN. And how do we do that?

Mr. MURRAY. Well, first of all, I mean, as a conceptual matter, there is a whole school of thought around creating a new human rights, which is called indivisibility. And the thrust of it is that you cannot really uphold or protect one human right without getting all the others right at the same time.

So what I have experienced in my work in the public sector, in the private sector, and in the nonprofit sector, is that there is a growing awareness, in the world in all of the countries that have been mentioned here, among civil society leaders, that they should have an expectation of a better life in which they have the right to expect that governments won't steal from them; that they won't be extorted; that they can be empowered, and economically able to get a business started.

Mr. MCGOVERN. Uh-huh.

Mr. MURRAY. And so where we get started is with maybe, I mean, all good practical and legal results start with a good idea and a good theory. So it may be that globalization compels us to think this whole international architecture through again at this time. That is the essence of what I am suggesting. As a practical matter, I am, myself, now just thinking about what a good strategy would be for engaging international civil society, the international legal community, all of the multilateral bodies that are interested in this, and so I don't have a specific recommendation, but I can tell you this, there is huge interest.

Mr. MCGOVERN. Well, and we would be interested in as you come to some, you

know, recommendations about, you know, concrete steps, and I agree with Judge Wolf. I mean, look, I would like the international mechanisms to work better. And I would like the, you know, all of the mechanisms within the U.N. to do what they are supposed to do, but sometimes it is a little bit of a challenge. And it is not just on the issues of corruption. It is on the issues of human rights, in general. And you know -- so I -- you know, again, I mean, if there are suggestions of kind of concrete steps that members of this Commission can take to urge some of, you know, I am assuming, I don't, you know -- some of the highest levels of the United Nations to, you know, that this is something that we are going to focused more attention on, I would like to engage them more, you know, if that is helpful, I think that is something we would be interested in doing.

Judge WOLF. Well, I actually, you mentioned the United Nations suggest something that you might do and that we might join you in doing, a new Secretary General will be selected soon. There are a number of candidates, reportedly, from around the world. I think that an effort should be made to get these issues we have been discussing. Under your leadership, how will the United Nations deal with grand corruption, the kleptocrats who also abuse the human rights of their citizens, give integrity, you know, require that integrity be given to the pledges made under the U.N. Convention Against Corruption, and what is your position on the International Anti-Corruption Court if countries' leaders are not living up to those obligations.

Mr. MCGOVERN. I think that's a good point. Ms. Ostfeld, I know you had something to say. Before you say it, I just wanted to tell you that I thought, again, that 60 Minutes piece was quite revealing. And, you know, sometimes I kind of feel that nothing shocks me anymore because, you know, everything that is going on. But I was -- that was shocking. And maybe technically nobody violated the law, but there is something, there is something that was, you know, that was troublesome to me that these attorneys that were being approached weren't saying this is illegal. You know, our legal advice is this is illegal. This is not something you should do. And these weren't, you know, ragtag attorneys from what I understood from the 60 Minutes piece. And you know, and again, I am not an attorney, so, but I do know there are codes of ethics and I do know, you know, the American Bar Association, you know, talks about some of these issues.

But, you know, it was also troublesome because it made us complicit in that corruption, you know, so it is not just something that is happening overseas. You know, we are allowing it to happen here. And so, but I thank you and Global Witness for doing that, but anyway --

Ms. OSTFELD. Thank you, Mr. Chairman, that is fantastic to hear, because that was the entire intent. You know, there is case after case of this kind of thing happening. There are all of these studies that show it, but nothing pictures it that you can't actually wrap your head around what this looks like, so that is why we wanted to make it visual. And it is based off of real cases.

Mr. MCGOVERN. Right.

Ms. OSTFELD. I mean, that is how we designed it. If you look at the Obiang case that was brought up, it is very similar to the ways in which he brought money into the United States. It is quite parallel, even though no money exchanged hands in the 60 Minutes example. But I wanted to go back to your other question which was what else can we be doing?

Mr. MCGOVERN. Right.

Ms. OSTFELD. And so Global Witness is very focused on the prevention side because it is so hard to prosecute as we have been talking about, and so hard to return stolen assets, that statistics show that less than 5 percent of money stolen is never returned so this is incredibly low. So we focus a lot on prevention. And so part of that is require, you know, companies specifically in oil, gas, mining to publish what they pay to

governments because that is the only way citizens in those countries can understand what should be coming into the Treasury in order to hold their governments accountable. And the SEC is going to issue a final rule requiring U.S. listed companies to do just that. We believe, imminently, we hope imminently. It has been a long process.

Mr. MCGOVERN. Good.

Ms. OSTFELD. And we need to stop, you know, rolling out the red carpet to the corrupt. I mean, that is the other piece of it, that there is a lot that we can be doing here. You know, the Towers of Secrecy series in The New York Times last year really shined a light on how dirty money is ending up in the Manhattan property market.

Mr. MCGOVERN. Right.

Ms. OSTFELD. As long as we are willing to take it and we are, because we want the money, that is why we haven't made these changes, this kind of behavior is still going to happen. But specifically on real estate, Congress has actually already spoken. Congress has already said that the real estate sector should be regulated with money laundering obligations since the PATRIOT Act.

Mr. MCGOVERN. Right.

Ms. OSTFELD. But they gave Treasury a temporary exemption in order to figure out how to do it. So that was in 2002. There has been this temporary exemption since then, and very, very little has happened. So Treasury could be pushed to actually issue a rule to start regulating the real estate sector, or parts of the real estate sector. What happened after The New York Times series is Treasury started to look at it a bit more and issued a temporary, what is called a geographic targeting order, looking at Manhattan and Miami and property over a specific amount, but it is very small and focused on title insurance companies, which is important, but if I am a corrupt dictator and I am putting millions of dollars into a property because I want to get it out of my country into another location, I don't need title insurance and I don't need a mortgage.

Mr. MCGOVERN. Yeah.

Ms. OSTFELD. So, it is a piece of the problem and it is something that Treasury could do now and Congress could pressure them to do it. As far as the beneficial ownership bill, I mean, what we have seen is that it is the easiest way to move money if you want to do it quietly is set up a company and hide the fact that you own it and that the largest problem is here.

And so while it is fantastic that the administration has put out a new proposal, it is also important to know that there is current legislation that is bipartisan that is actually very similar. What the legislation does, the Incorporation Transparency and Law Enforcement Assistance Act is require Treasury to collect beneficial ownership information from American companies with a number of exemptions when they are incorporated, unless the States are already doing so.

So it enables the States to decide if they want to update their process in order to collect this information. That is where incorporation lies, and if they don't, Treasury is a backstop.

Mr. MCGOVERN. And that is the Peter King-Carolyn Maloney bill?

Ms. OSTFELD. Yes.

Mr. MCGOVERN. Okay.

Ms. OSTFELD. Which has a companion in the Senate that is also bipartisan.

Mr. MCGOVERN. Thank you.

Mr. SIFTON. No, I was just going to finish. I have something to add on that bill, but go ahead.

Ms. OSTFELD. And the other piece is visa bans that go along with the real estate which is clearly part of Magnitsky.

Mr. MCGOVERN. Right.

Ms. OSTFELD. And bringing all of that together to make it a lot harder to move your money deters some of it in the first place because when you are talking about grand

corruption, they want to spend it in some other place. They want their kids to go to school here --

Mr. MCGOVERN. Right.

Ms. OSTFELD. -- and in London and Paris. And to make it harder to do that, and if you can't move the money, nobody wants to keep all of the money inside their country.

Mr. MCGOVERN. Mr. Sifton.

Mr. SIFTON. The legislation on beneficiary transparency is very important. It may sound a little boring and nobody likes talking about Delaware's corporate laws, but it is a very important piece of legislation, and it goes to the heart of what was being discussed in London. And that just leads me to a side corollary of that, which is that the United States Government is not going to be able to convince other governments to make improvements in their regimes if they can't show that it is making improvements to its regime. It is very difficult to talk to David Cameron about the massive amount of tax savings that exist under British jurisdiction if you as a U.S. Government official haven't been showing that your government is taking its efforts here with Delaware and Wyoming and other States like that. They have got their British Virgin Islands, we have got our Delaware. We have to deal with each.

Mr. MCGOVERN. Right.

Mr. SIFTON. And one thing that Congress can do is members of Parliament -- excuse me, Members of Congress can meet and discuss common ground with members of Parliament in London who are addressing the same issues of -- they are very different issues, but they can come together in working to change the laws on the books there, but also pressure their own leaders.

And that brings me to the last thing, which is, a lot of the stuff that needs to happen also is just about the executive being a good executive. And Members of Congress can do a whole lot just by urging the executive, the next President, whoever she or he is, to better coordinate the National Security Council staff. There is an atrocity prevention board.

Mr. MCGOVERN. Right.

Mr. SIFTON. I mean, there is legislation to create it, but there is really just the executive operating on their own to coordinate the interagency process to deal with things. Why not have a National Security Council staffer director who is, you know, very much working to coordinate anticorruption better than they do right now?

Judge WOLF. That person exists now. I have worked with her, and she is dedicated. All of these measures, and the President, when he sent up his proposed legislation, also strengthened the Treasury regulations that relate to disclosure of beneficial ownership. So some things have been done. But I think that while it is true people would rather own property in New York or Palm Springs, there are many other attractive places around the world and that increased transparency of beneficial ownership, I reiterate in my view, is not an end in itself.

We wouldn't want to live in the United States in a system where we relied on civil remedies like asset recovery, or civil lawsuits, to deter corruption or, indeed, any kind of crime, bank robbery. I mean, a fundamental premise in our country of the criminal law is that the laws are on the books. They make a threat. They threaten that if you violate those laws by robbing a bank or a public official taking a bribe, that there will be consequences. And that it would be a miscalculation to think that it is worth it.

And there is a gaping hole, in my view, in the international system, because that fundamental premise of the criminal law in the United States and the U.K., generally, doesn't exist with regard to high-level, corrupt public officials. And all of these other measures are important. More transparency of beneficial ownership and improved ability to investigate the flow of corruptly obtained money would be essential to the efficacy of International Anti-Corruption Court.

But I reiterate, if we know who owns the property, but maybe now some of it is in

Panama or some lovely Caribbean island, not in Palm Springs, and if we have the evidence, you are not going to turn it over to the courts in Panama, because somebody who violated the Panama money laundering laws is not going to be effectively prosecuted in Panama. And if that money came from Malaysia, as has been mentioned, you are not going to give the evidence back to Malaysia. When the \$682 million was found in the Prime Minister's account, his chief prosecutor cleared him of any wrongdoing. The Swiss are investigating. They are not convinced that laws weren't broken. But their investigation is frustrated because they can't get cooperation in Malaysia.

So improved law enforcement investigations are important, but ultimately, you need someplace where the evidence can go and where people recognize that there is a serious risk, not that they will just have to give back a fraction of what they have stolen, but that they will go to prison and then, hopefully, they will behave differently and by not stealing these funds also not deprive their citizens of their most vital human rights.

Mr. MCGOVERN. You know, just one other issue, then I will address you guys for closing comments, things that you want to get on the record that I didn't ask, but the other issue that I keep on thinking about that is essential here is the issue of protection.

I mean, you know, I mentioned the Sergei Magnitsky Act. I mean, this was a guy who was a whistleblower in Russia and who was basically was killed in prison for being outspoken. Some of the worst corruption in Russia's history. And just like human rights defenders all around the world who dare to raise an issue that is uncomfortable for the powers that be, you know, and they get threatened, I mean, the same thing happens here. And sometimes, you know, some of these powerful people take it even more seriously because it goes at their pocketbook and they can't ignore it.

So I am just trying to figure out whether anyone has any recommendations on having to do with protection, you know, how we can beef up protections for people who expose corruption because what we have seen is that there is a lot of history here where people end up dead or in prison and -- or they are defamed, or whatever, and, you know, and I don't know whether anyone has any ideas about that?

Mr. SIFTON. One thing I would say is that the State Department has done amazing work over the years protecting civil society members and human rights defenders who come under threat, but to be perfectly frank, their efforts are always a little bit ad hoc. And it would be good to actually -- I don't think it is worth a hearing, but it would be good to really lay into State a little bit more about systematizing the way they deal with protection of human rights defenders overseas. Because it is very ad hoc. It is very personality based, case-based, ambassador, sort of, style-of-business based. And that should change. I think they need to really systematize it a lot more.

By the way, Malaysia --

Mr. MCGOVERN. Yeah.

Mr. SIFTON. -- the person who leaked the information to Sarawak Report and ended up in The Wall Street Journal that exposed Najib's corruption, is dead. I can't say why he died. I am not saying that Najib killed him. I cannot say that. That would be defamatory. But these are very real issues that need to be addressed.

Mr. MCGOVERN. And we are seeing that all around the world. I mean, even in Honduras, you are getting people who are labeled as human rights defenders, but who are also exposing corruption and they are ending up dead. You know, all, I mean, it is happening. And I think we need to also figure out, you know, if we are going to encourage people to expose this and to talk to reporters, or to, you know, until we get a system in place where we can hold people accountable, you know, there needs to be something, you know, where we can guarantee the safety of people who come forward with this information. So --

Judge WOLF. I think it requires a different paradigm. I, of course, have dealt with many people who ended up in the witness protection program, because as you know, I

have had, in the past, more than 25 years major Mafia cases and other organized crimes cases including those one involving James Whitey Bulger who was murdering people that the FBI told him were informing against him. I found that it has been proven beyond a reasonable doubt in trials.

But there, we recognize and describe the people who were threatening to the witnesses as criminals. Here we are talking politely about the prime minister of this, and the president of that. If they are killing or menacing people who are exercising their right to free speech, universal right to free speech, and exposing corruption, they are criminals. And they shouldn't be treated as honored members of the international community at summits or elsewhere. They can do this with impunity because they are not treated the way we treat criminals in the United States and the way people conventionally regarded as criminals are treated in almost all countries.

Mr. MCGOVERN. Right.

Judge WOLF. So there is something of a paradigm shift, perhaps, that is required here. But again, it is bringing the criminal law, in some fashion, to bear, and part of it is not semantic, but rhetorical, in saying that this -- we have a criminal investigation. If what Mr. Sifton described happened in one of my organized crime cases, somebody gives the FBI information about a member of La Cosa Nostra, and then that person dies under suspicious circumstances, there is a major criminal investigation by an independent, impartial body and there is a place to bring the evidence.

And even if it is a high-level Mafioso, the investigation and the prosecution are conducted. But if the same conduct is engaged in by a prime minister of a country, they are now somewhat in a situation of saying what can we do? And Malaysia is a party to the U.N. Convention Against Corruption. It has made a pledge, and I don't really see the international community putting pressure on Malaysia to live up to its obligations to conduct investigations when there is good reason to.

Mr. MCGOVERN. Right. But until we get that international mechanism in place. I think, I mean, kind of our experience has been, you know, you call a lot of attention to the person who had the courage to come forward and you give them that circle of protection. Whatever, you know, whatever, and certainly at the highest levels of our government, you know, even mentioning some of these human rights defenders by name, you know, may not guarantee that they don't go to prison, but probably might guarantee that they don't get killed.

Judge WOLF. Yeah.

Mr. MCGOVERN. You know, and so we need to think about ways that we can, you know, I think better provide that protection to human rights defenders and whistleblowers on issues of corruption.

So let me begin with, any final words, any concrete additional recommendations that you think this Commission should undertake? And we can, you know, whatever I didn't ask that you think is important to get on the record, I would yield to you, and --

Mr. SIFTON. Real quick. I think the last point is a very important one. And Members of Congress and the executive, whoever the executive is, and the State Department, Treasury Secretary, anybody meeting with civil society gives them a measure of protection that may very well keep them alive. So that is one thing.

And then the second thing is, Human Rights Watch publishes every year, as you know, the world report which is about 90 different countries. The State Department publishes its human rights reporting. One other thing that hasn't been discussed, if we are going to make corruption into a human rights issue of its own and not just something that drives other human rights abuses, it might behoove Congress to consider compelling the State Department to write about corruption the same way it writes about human rights.

Mr. MCGOVERN. That is something we can actually do from here. So thank you. Ms. Ostfeld.

Ms. OSTFELD. Thank you, Mr. Chairman, and especially for mentioning Berta Caceres from Honduras that we had worked with her --

Mr. MCGOVERN. An incredible woman.

Ms. OSTFELD. -- in the past. We put out a report each year which we talk about environmental defenders who have been murdered. For the last 4 years, we have put out this report and by "environmental defenders," we mean people trying to protect their land and their livelihoods, and last year, in April, we actually launched it with Berta here in D.C. on the panel. And on Monday, we will be releasing a report for 2015 which is actually going to show that numbers have increased. So if it is okay, I would submit it for the record --

Mr. MCGOVERN. Absolutely. Without objection.

Ms. OSTFELD. -- although it is embargoed until Monday. But that the U.S., in particular, could use its influence to make sure there are independent prosecutions in these cases. Berta has gotten a lot of attention, but there are hundreds more where their names are not known and nothing is happening. Somebody else from her organization was also murdered, and there is no investigation there. Thank you.

Mr. MCGOVERN. Mr. Murray.

Mr. MURRAY. Congressman, let me close by saying, first, thank you very much for your leadership on this issue and for entertaining all ideas, including, as Judge Wolf has suggested, the need to think about whether we are in the midst of a paradigm shift and I think we are. And so whether, as a political leader, or a thought leader, or civil society leaders, I think there is abundant evidence that the -- you cannot simultaneously maintain these legal commitments, obligations, and with public awareness rising not meet them, so this is all good.

Mr. MCGOVERN. Right.

Mr. MURRAY. And so back to the thesis that I presented today. There are cultures of impunity where there is a certain level of corruption that may be tolerated and then -- and that happens at an official level. It also is endemic in this civil society and where the culture takes place. So the advantage of the rights paradigm that I put forth, it could, over time, shift expectations of citizens so that they come to have higher expectations and want to hold government officials accountable not only for their corrupt act, but also for the delivery of good, efficient, honest public services on a day-to-day basis.

And so there is an affirmative aspect of all of this, which is, another way of saying there is a freedom from corruption that exists out there as a human right, is to say there is a right to honest government service that could be deemed to be universal. And this is an area that is controversial within the law, within the bar, internationally, domestically, but it is always, I think, important to think about this in the affirmative.

Mr. MCGOVERN. Right.

Mr. MURRAY. What can be done to build civil society and strengthen their expectations that they deserve to get honest public service on a day-to-day basis. Because the less tolerance they have, the more unlikely it is that kleptocracy can be done with impunity.

Mr. MCGOVERN. Thank you. Judge.

Judge WOLF. I, too, would like to thank you again for convening this hearing. I thank Human Rights Watch for reiterating its endorsement of the International Anti-Corruption Court. I thank Global Witness for its endorsement and I particularly thank you for your dedication to these issues. You said a number of things that recognize, or perhaps emanate from the many battles, worthy battles you fought and not yet won, and one could -- it is correct to say that the effort to establish accountable under the criminal law through the International Anti-Corruption Court, particularly, at best, is a long one, an uncertain one, but I am one of the older people in the room. I have seen seemingly unimaginable things happen, and happen really rather quickly; the fall of

apartheid in South Africa; the collapse of the Soviet Union; Louis Brandeis said something, my judicial hero said something very similar to what Mandela said. "It always seems impossible until it happens." But even recognizing that some of the things that we are discussing striving for, might never be achieved, there are young people around the world who do not accept corruption generally, or grand corruption, particularly as an inevitable way of life, the way perhaps their parents did. There are people like Sharon and John Githongo for whom she works, with whom she works, who are risking their lives in Kenya to have more honest government that will also provide greater security against al-Shabaab and others.

And at a minimum, whether we win or lose to be colloquial, we owe it to them to have leadership in this country that makes its best effort to combat corruption and to promote human rights. You are a leader in that. I am confident that this quest is becoming much less lonely and I look forward to continuing on this path with you and many others.

Mr. MCGOVERN. Well, thank you. I want to thank you all for your excellent testimony, and there is a lot of follow-up that I think this Commission has to do after listening to all of you here today. You know, I support the goal of the International Anti-Corruption Court. I think that I would urge you to stay in touch with the Commission. If there are ideas that you come up with in the coming weeks and months that you think we could follow up on, we would like to do that. The other thing is, you know, we will have a new administration and so maybe this group or, you know, or a few others in addition to you, you know, maybe we can help facilitate a conversation with the next administration about how do we get this issue, make sure it stays front and center, you know, and it will maybe have to be an interagency meeting. And so any event, I appreciate you being here, and have a good weekend. Thank you. The hearing is adjourned.

[Whereupon, at 4:47 p.m., the Commission was adjourned.]

A P P E N D I X

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Tom Lantos Human Rights Commission Hearing
Corruption and Human Rights: Improving Accountability
Hearing notice

Thursday, June 16, 2016
3:00 – 4:30 PM
2200 Rayburn House Office Building

Please join the Tom Lantos Human Rights Commission for a hearing on corruption as it intersects with human rights violations, and the prospects for strengthening accountability at the international level, including through strengthened criminal prosecution.

There is growing recognition around the world of the impact of corruption on human rights. In October 2003, when the *Convention Against Corruption* (UNCAC) was adopted by the U.N. General Assembly, then-Secretary-General Kofi A. Annan described corruption as “an insidious plague” that undermines democracy and rule of law, and leads to violations of human rights. Ten years later, in March 2013, Navi Pillay, U.N. High Commissioner for Human Rights, argued that corruption is an enormous obstacle to the realization of all human rights.

In the United States, the dual goals of human rights and anti-corruption promotion are found in national strategy documents and in law. The White House National Security Strategy of 2010 characterized corruption itself as a “violation of basic human rights.” The Obama Administration’s 2014 fact sheet on the U.S. Global Anticorruption Agenda stated that “pervasive corruption [...] undermines the rule of law and the confidence of citizens in their governments, facilitates human rights abuses and organized crime, empowers authoritarian rulers, and can threaten the stability of entire regions.”

Last month, Prime Minister David Cameron of the United Kingdom hosted the Anti-Corruption Summit 2016 in London. The concluding Declaration stated that there is to be no impunity for those responsible for corruption, and the accompanying communiqué identified steps to be taken to strengthen transparency and enforce existing laws. Participating governments committed to “explore innovative solutions,” build on UNCAC, and support international institutions and cooperation. Some innovative mechanisms already in place, such as the International Commission Against Impunity in Guatemala, CICIG, have helped justice systems advance significantly in prosecuting corrupt officials, and have empowered civil society to confront corrupt practices.

The hearing will examine what has been done to date in the effort to combat corruption at the international level, and ask what more is needed. Witnesses will review the commitments made at the Anti-Corruption Summit, and offer recommendations for increasing the impact of existing national and international laws and tools, and for institutional reforms to complement these, including an international anti-corruption court.

The following witnesses will testify:

Panel I

- **Mr. John Sifton**, Deputy Washington Director, Human Rights Watch
- **Ms. Stephanie Ostfeld**, Acting Head of U.S. Office, Global Witness
- **Mr. Matthew Murray**, Esq., International Law Expert
- **The Honorable Mark L. Wolf**, Chair, Integrity Initiatives International, and author of "The Case for an International Anti-Corruption Court"

The hearing is open to Members of Congress, congressional staff, the public and the press. The hearing will be live-streamed via the Commission's webpage. For any questions, please contact Kimberly Stanton (for Rep. McGovern) at 202-225-3599 or Kimberly.Stanton@mail.house.gov or Isaac Six (for Rep. Pitts) at 202-225-2411 or Isaac.Six@mail.house.gov.

Sincerely,

James P. McGovern
Co-Chair, TLHRC

Joseph R. Pitts
Co-Chair, TLHRC

