

**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.*<sup>1</sup>**

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."<sup>2</sup> 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."<sup>3</sup>

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<sup>1</sup> 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.

<sup>2</sup> Attached is my November 13, 2014 statement to the Lantos Human Rights Commission concerning "The Case for an International Anti-Corruption Court."

<sup>3</sup>Navi Pillay, High Commissioner for Human Rights, Opening Statement To OHCHR Panel on "The Negative Impact of Corruption

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."<sup>4</sup> Similarly, as Nicholas Kristof wrote in a series of articles in the New York Times last year, Angola is "a country laden with oil, diamonds, Porshe driving millionaires and toddlers starving to death."<sup>5</sup> Angola is first in the world in the rate at which children die before age five,<sup>6</sup> while the daughter of Angola's President, Isabel dos Santos, is reportedly worth \$3 billion dollars.<sup>7</sup>

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.

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on Human Rights" (Mar. 13, 2013),  
<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13131&LangID=e#sthash.dys0eOCR.dpuf>.

<sup>4</sup> 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>.

<sup>5</sup>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>.

<sup>6</sup> Id.

<sup>7</sup>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>.

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."<sup>8</sup>

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.<sup>9</sup>

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 throughout the world.<sup>10</sup> 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."<sup>11</sup>

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<sup>8</sup>Pillay, supra note 3.

<sup>9</sup> 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>.

<sup>10</sup> 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>.

<sup>11</sup> Id.

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."<sup>12</sup> Rather, "it is everybody's responsibility to . . . hold perpetrators accountable."<sup>13</sup>

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."<sup>14</sup> In the Summit Communique, those nations recognized that "[t]ackling corruption is vital for . . . protecting human rights."<sup>15</sup> Implicitly recognizing that existing institutions and efforts have not been adequate, the participating governments committed themselves to "exploring innovative solutions" to combat corruption.<sup>16</sup>

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.

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<sup>12</sup> 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>

<sup>13</sup> Id.

<sup>14</sup> 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>.

<sup>15</sup> Id.

<sup>16</sup> United Kingdom Office of the Prime Minister, "Anti-corruption Summit | London 2016 - Communique", ¶3 (May 12, 2016), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/522791/FINAL\\_-\\_AC\\_Summit\\_Communique\\_-\\_May\\_2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522791/FINAL_-_AC_Summit_Communique_-_May_2016.pdf).

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.<sup>17</sup> In any event, 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"<sup>18</sup> 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.

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<sup>17</sup> 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 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/tlhrc.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).

<sup>18</sup> Anti-corruption Summit Communique, supra note 15, ¶28.

In the Summit Communique, the participating nations pledge to implement UNCAC and express support for its implementation review mechanism.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup>

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.<sup>22</sup> As a result, he was removed from office and is now being prosecuted for disturbing the peace.<sup>23</sup> 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 being prosecuted themselves for allegedly attempting a coup.<sup>24</sup> A businessman who was cleared in Turkey of bribing those ministers is now being prosecuted in New York for doing just that.<sup>25</sup>

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<sup>19</sup> Id. ¶3.

<sup>20</sup> 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.

<sup>21</sup> 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](http://www.transparency.org/whatwedo/publication/un_convention_against_corruption_progress_report_2013).

<sup>22</sup> 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](http://www.nytimes.com/2016/06/07/world/middleeast/egypt-hisham-geneina-trial.html?_r=0).

<sup>23</sup> Id.

<sup>24</sup> "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>.

<sup>25</sup> Id.

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 IACC<sup>26</sup> 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."<sup>27</sup>

The proposed IACC is the quintessential "innovative solution[]" to combatting grand corruption that the participants

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<sup>26</sup> 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>.

<sup>27</sup> 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.

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 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.<sup>28</sup>

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

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<sup>28</sup> Additional information concerning III can be found on its website, [integrityinitiatives.org](http://integrityinitiatives.org).

explain why it is time to recognize that the comparable consequences of grand corruption require the creation of an IACC.