



**Tom Lantos Human Rights Commission Briefing:  
An International Anti-Corruption Court (IACC) to Mitigate Grand  
Corruption and Human Rights Abuses**

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*Oral Testimony of Arvind Ganesan, Business and Human Rights director, Human Rights Watch*

Chairman McGovern, Chairman Wolf, and members of the Lantos Human Rights Commission,

Thank you for providing us this important opportunity to speak about the linkage between grand corruption and Human Rights and remedies for this serious problem.

For more than 15 years, Human Rights Watch has documented the impact grand corruption has on human rights. It is our belief that it is one of the key drivers for human rights problems in many parts of the world. In general, Human Rights Watch has repeatedly found that mismanagement and corruption impacts human rights in several 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.<sup>1</sup> 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.

For example, Human Rights Watch documented that in Angola, 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.<sup>2</sup>

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<sup>1</sup> OHCHR, “Frequently Asked Questions on Economic, Social and Cultural Rights,” December 2008, <http://www.ohchr.org/Documents/Publications/FactSheet33en.pdf> (accessed November 10, 2014). The United States has not ratified the International Covenant on Economic, Social, and Cultural Rights.

<sup>2</sup> Human Rights Watch, *Some Transparency, No Accountability: The Use of Oil Revenue in Angola and its Impact on Human Rights*, January 2004, <http://www.hrw.org/reports/2004/01/12/some-transparency-no-accountability-0>; Human Rights Watch, *Transparency and Accountability in Angola: an Update*, April 2010, <http://www.hrw.org/reports/2010/04/13/transparency-and-accountability-angola-0>.

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.<sup>3</sup>

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.<sup>4</sup>

- **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.<sup>5</sup>

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.<sup>6</sup>

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. 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.<sup>7</sup> 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.

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<sup>3</sup> "Angola: IMF Should Insist on Audit," Human Rights Watch news release, July 11, 2012, <http://www.hrw.org/news/2012/07/11/angola-imf-should-insist-audit>.

<sup>4</sup> Human Rights Watch, "*Chop Fine*": *The Human Rights Impact of Local Government Corruption and Mismanagement in Rivers State, Nigeria*, February 2007, <http://www.hrw.org/de/reports/2007/01/31/chop-fine>.

<sup>5</sup> Human Rights Watch, *Well Oiled: Oil and Human Rights in Equatorial Guinea*, July 2009, <http://www.hrw.org/reports/2009/07/09/well-oiled-0>.

<sup>6</sup> "Angola: Defamation Laws Silence Journalists," Human Rights Watch news release, August 12, 2013, <http://www.hrw.org/news/2013/08/12/angola-defamation-laws-silence-journalists>.

<sup>7</sup> "Azerbaijan: Transparency Group Should Suspend Membership," Human Rights Watch news release, August 14, 2014, <http://www.hrw.org/news/2014/08/14/azerbaijan-transparency-group-should-suspend-membership>.

The *New York Times* has reported that some of its reporters are being denied visas in China in retaliation for a series of groundbreaking stories that detailed how family members of current and former government officials have become fabulously wealthy because of ties to high-level government officials.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup> 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. This October 10, the Department of Justice announced a \$30 million settlement with Teodorin Obiang, the son of President Obiang, and currently the second vice-

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<sup>8</sup> Andrew Jacobs, "Foreign Journalists in China See Decline in Reporting Conditions," *New York Times Sinosphere Blog*, <http://sinosphere.blogs.nytimes.com/2014/09/12/foreign-journalists-in-china-see-decline-in-reporting-conditions/> (accessed November 11, 2014).

<sup>9</sup> David M. Luna, Director for Anti-Crime Programs Division, INL, "Strategies to Fight Kleptocracy," September 2007, <http://2001-2009.state.gov/p/inl/rls/rm/92911.htm> (accessed November 11, 2014).

<sup>10</sup> The White House, Office of the Press Secretary, "The U.S. Global Anticorruption Agenda," September 24, 2014, <http://www.whitehouse.gov/the-press-office/2014/09/24/fact-sheet-us-global-anticorruption-agenda> (accessed November 11, 2014).

president of Equatorial Guinea, for corruption and money laundering in a years-long case involving a multimillion dollar mansion, sports cars, and more than a million dollars in Michael Jackson memorabilia that he bought in the United States.<sup>11</sup> While this is a major step, it is less than half of what the US originally sought, Obiang did not have to admit wrongdoing, and a crystal-covered glove from Michael Jackson's Bad Tour was secreted away and presumably Obiang is keeping it.<sup>12</sup>

And just last week, the *Wall Street Journal* reported that the US government may be investigating oligarchs tied to Russian President Vladimir Putin under the anti-kleptocracy initiative.<sup>13</sup>

### **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

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<sup>11</sup> US Department of Justice, "Department of Justice Seeks to Recover More Than \$70.8 Million in Proceeds of Corruption from Government Minister of Equatorial Guinea," October 25, 2011, <http://www.justice.gov/opa/pr/department-justice-seeks-recover-more-708-million-proceeds-corruption-government-minister> (accessed November 11, 2014).

<sup>12</sup> Lisa Misol, "Kleptocracy Case Lifts a Veil on Rights Abuses," *The Huffington Post*, October 15, 2014, <http://www.hrw.org/news/2014/10/15/kleptocracy-case-lifts-veil-rights-abuses>.

<sup>13</sup> Christopher Matthews and Andrew Grossman, "U.S. Money-Laundering Probe Touches Putin's Inner Circle," *The Wall Street Journal*, November 5, 2014, <http://online.wsj.com/articles/u-s-money-laundering-probe-touches-putins-inner-circle-1415234261> (accessed November 11, 2014).

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 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.

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Arvind Ganesan, director of Human Rights Watch's Business and Human Rights Division, is involved in research, advocacy, and policy development for Human Rights Watch on issues involving business and human rights, including the extractive industries; freedom of expression and information through the internet; labor rights; trade; corruption; sanctions; and advancing international human rights standards on business.

Ganesan has developed industry standards to ensure companies and other institutions respect human rights. He is a founder of the Voluntary Principles on Security and Human Rights for the oil, gas, and mining industries and is a founding member of the Global Network Initiative for the internet and telecommunications industries. He has also helped to develop standards for international financial institutions such as the World Bank, and regularly engages governments in an effort to develop mandatory rules or strengthen existing standards, such as the Kimberley Process.

Ganesan's work has covered countries such as Angola, Azerbaijan, Burma, China, Colombia, the Democratic Republic of Congo, Equatorial Guinea, India, Indonesia, and Nigeria. He has written numerous reports on business and human rights issues for Human Rights Watch. He is widely cited in media on issues related to human rights and business.

Before joining Human Rights Watch, Ganesan worked as a medical researcher. He attended the University of Oklahoma.