

**UNDERSTANDING ODEBRECHT:
LESSONS FOR
COMBATING CORRUPTION IN THE
AMERICAS**

HEARING
BEFORE THE
SUBCOMMITTEE ON
THE WESTERN HEMISPHERE, CIVILIAN SECURITY,
AND TRADE
OF THE
COMMITTEE ON FOREIGN AFFAIRS
HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTEENTH CONGRESS
FIRST SESSION

TUESDAY, MARCH 26, 2019

Serial No. 116-18

Printed for the use of the Committee on Foreign Affairs



U.S. GOVERNMENT PUBLISHING OFFICE
35-616PDF WASHINGTON : 2019

Available: <http://www.foreignaffairs.house.gov/>, <http://docs.house.gov/>,
or www.govinfo.gov

COMMITTEE ON FOREIGN AFFAIRS

ELIOT L. ENGEL, New York, *Chairman*

BRAD SHERMAN, California	MICHAEL T. McCAUL, Texas, <i>Ranking Member</i>
GREGORY W. MEEKS, New York	
ALBIO SIRES, New Jersey	CHRISTOPHER H. SMITH, New Jersey
GERALD E. CONNOLLY, Virginia	STEVE CHABOT, Ohio
THEODORE E. DEUTCH, Florida	JOE WILSON, South Carolina
KAREN BASS, California	SCOTT PERRY, Pennsylvania
WILLIAM R. KEATING, Massachusetts	TED S. YOHO, Florida
DAVID N. CICILLINE, Rhode Island	ADAM KINZINGER, Illinois
AMI BERA, California	LEE ZELDIN, New York
JOAQUIN CASTRO, Texas	JIM SENSENBRENNER, Wisconsin
DINA TITUS, Nevada	ANN WAGNER, Missouri
ADRIANO ESPAILLAT, New York	BRIAN MAST, Florida
TED LIEU, California	FRANCIS ROONEY, Florida
SUSAN WILD, Pennsylvania	BRIAN FITZPATRICK, Pennsylvania
DEAN PHILLIPS, Minnesota	JOHN CURTIS, Utah
ILHAN OMAR, Minnesota	KEN BUCK, Colorado
COLIN ALLRED, Texas	RON WRIGHT, Texas
ANDY LEVIN, Michigan	GUY RESCHENTHALER, Pennsylvania
ABIGAIL SPANBERGER, Virginia	TIM BURCHETT, Tennessee
CHRISSEY HOULAHAN, Pennsylvania	GREG PENCE, Indiana
TOM MALINOWSKI, New Jersey	STEVE WATKINS, Kansas
DAVID TRONE, Maryland	MIKE GUEST, Mississippi
JIM COSTA, California	
JUAN VARGAS, California	
VICENTE GONZALEZ, Texas	

JASON STEINBAUM, *Staff Director*
BRENDAN SHIELDS, *Republican Staff Director*

SUBCOMMITTEE ON THE WESTERN HEMISPHERE, CIVILIAN SECURITY, AND TRADE

ALBIO SIRES, New Jersey, *Chairman*

GREGORY W. MEEKS, New York	FRANCIS ROONEY, Florida, <i>Ranking Member</i>
JOAQUIN CASTRO, Texas	
ADRIANO ESPAILLAT, New York	CHRISTOPHER H. SMITH, New Jersey
DEAN PHILLIPS, Minnesota	TED S. YOHO, Florida
ANDY LEVIN, Michigan	JOHN CURTIS, Utah
VICENTE GONZALEZ, Texas	KEN BUCK, Colorado
JUAN VARGAS, California	MIKE GUEST, Mississippi

SADAF KHAN, *Staff Director*

CONTENTS

	Page
STATEMENTS SUBMITTED FROM COMMITTEE MEMBERS	
Prepared statement submitted by Chairman Sires	3
WITNESSES	
Camilleri, Michael, Director, Peter D. Bell Rule of Law Program, Inter-American Dialogue	9
Salazar, Katya, Executive Director, Due Process of Law Foundation	17
Hall, David L., Partner, Wiggin and Dana LLP	24
APPENDIX	
Hearing Notice	44
Hearing Minutes	45
Hearing Attendance	46
RESPONSES TO QUESTIONS SUBMITTED FOR THE RECORD	
Questions submitted by Chairman Sires	47
Questions submitted by Representative Rooney	51

UNDERSTANDING ODEBRECHT: LESSONS FOR COMBATING CORRUPTION IN THE AMERICAS

TUESDAY, MARCH 26, 2019

HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON THE WESTERN HEMISPHERE,
CIVILIAN SECURITY, AND TRADE
COMMITTEE ON FOREIGN AFFAIRS
Washington, DC

The committee met, pursuant to notice, at 10:02 a.m., in Room 2172 Rayburn House Office Building, Hon. Albio Sires (chairman of the subcommittee) presiding.

Mr. SIRES. Good morning, everyone. This hearing will come to order. This hearing, titled “Understanding Odebrecht: Lessons for Combating Corruption in the Americas,” will focus on Odebrecht’s regional corruption scandal and U.S. policy options to support the fight against corruption in Latin America. Without objection, all members may have 5 days to submit statements, questions, extraneous materials for the record, subject to the length limitation in the rules.

I will now make an opening statement before turning to the ranking member for his opening statement.

Good morning, everyone. Thank you to our witnesses for being here today for a topic that extends across much of our hemisphere. Odebrecht is a Brazilian construction firm, but its name has become synonymous with one of the largest global corruption scandals in history. This web of bribery and money laundering with Odebrecht at its center has reached at least ten countries in the Western Hemisphere, brought down presidents, and shaken public confidence in government institutions.

In 2016, Odebrecht and Braskem, a petrochemical company partly owned by Odebrecht, reached a plea deal with the U.S. Department of Justice. Under that agreement, Odebrecht agreed to pay at least \$3.5 billion in penalties to resolve bribery charges in the U.S., Brazil, and Switzerland. It was the largest ever global bribery resolution in history. We know from the agreement that Odebrecht paid nearly \$800 million in bribes from 2001 to 2016. However, this may be a low estimate. Countries like Venezuela have stifled efforts to investigate allegations linking government officials to corrupt payoffs.

This scandal has rocked the political system of numerous countries including Brazil and Peru. Just last week, Brazil’s former president, Michel Temer, was arrested for accepting bribes and campaign contributions from Odebrecht and other firms. In Peru, virtually every major political leader has been tarnished by Odebrecht including the last four presidents.

In this hearing, we hope to better understand how this massive corruption scheme was executed. We will examine how Odebrecht attempted to buy off politicians from across the political spectrum. We will also look at how it moved money across borders using anonymous shell companies. A harsh reality is that dirty money from Odebrecht passed frequently through U.S. banking and financial systems. We must examine how we can do a better job in the future of stemming these illicit flows.

We should also take this opportunity to assess U.S. policy and U.S. assistance programs to combat corruption in Latin America. Many governments and civil society organizations in the region are working hard to learn from cases like Odebrecht and prevent this from happening again. I believe the U.S. must be a reliable partner for those government officials seeking to root corruption and for the local organizations seeking to expose it.

We should identify and support those who show the courage and political will to tackle this problem wherever it appears. As we look to the Fiscal Year 2020 budget, it is essential that we provide levels of foreign assistance funding that reflect our commitment to supporting a regional fight against corruption. We know that corruption erodes democracy, undermines the rule of law, and breeds citizen distrust and it is imperative that we work together to strengthen the region's institutions.

Democracy, human rights, and the rule of law should be at the center of our foreign policy. I look forward to hearing from the experts with us today about further steps the U.S. Government can take to help combat corruption in this hemisphere.

Thank you, and I now turn to the ranking member for his opening statement.

[The prepared statement of Mr. Sires follows:]

House Committee on Foreign Affairs
Western Hemisphere Subcommittee

Chairman Albio Sires (D-NJ)

Opening Statement – “Understanding Odebrecht: Lessons for Combating Corruption in the Americas”
Tuesday, March 26, 2019

-
- Good Morning everyone and thank you to our witnesses for being here today for a topic that extends across much of our hemisphere.
 - Odebrecht is a Brazilian construction firm, but its name has become synonymous with one of the largest global corruption scandals in history.
 - This web of bribery and money laundering with Odebrecht at its center has reached at least 10 countries in the Western Hemisphere, brought down presidents, and shaken public confidence in government institutions.
 - In 2016, Odebrecht and Braskem, a petrochemical company partially owned by Odebrecht, reached a plea deal with the U.S. Department of Justice.
 - Under that agreement, Odebrecht agreed to pay at least 3.5 billion dollars in penalties to resolve bribery charges in the U.S., Brazil, and Switzerland.
 - It was the largest-ever global bribery resolution in history.
 - We know from that agreement that Odebrecht paid nearly 800 million dollars in bribes from 2001 to 2016.
 - However, this may be a low estimate.
 - Countries like Venezuela have stifled efforts to investigate allegations linking government officials to corrupt payoffs.
 - The scandal has rocked the political systems of numerous countries, including Brazil and Peru.
 - Just last week, Brazil’s former President Michel Temer was arrested for accepting bribes and campaign contributions from Odebrecht and other firms.
 - In Peru, virtually every major political leader has been tarnished by Odebrecht, including the last four presidents.
 - In this hearing, we hope to better understand how this massive corruption scheme was executed.
 - We will examine how Odebrecht attempted to buy off politicians from across political spectrum.

- We will also look at how it moved money across borders using anonymous shell companies.
- A harsh reality is that dirty money from Odebrecht passed frequently through the U.S. banking and financial systems.
- We must examine how we can do a better job in the future of stemming these illicit flows.
- We should also take this opportunity to assess U.S. policy and U.S. assistance programs to combat corruption in Latin America.
- Many governments and civil society organizations in the region are working hard to learn from cases like Odebrecht and prevent this from happening again.
- I believe the U.S. must be a reliable partner for those government officials seeking to root out corruption and for the local organizations seeking to expose it.
- We should identify and support those who show the courage and political will to tackle this problem wherever it appears.
- As we look to the Fiscal Year 2020 budget, it is essential that we provide levels of foreign assistance funding that reflect our commitment to supporting the regional fight against corruption.
- We know that corruption erodes democracy, undermines the rule of law, and breeds citizen distrust and it is imperative that we work together to strengthen the region's institutions.
- Democracy, human rights, and the rule of law should be at the center of our foreign policy.
- I look forward to hearing from the experts with us today about what further steps the U.S. government can take to help combat corruption in this hemisphere.
- Thank you, I now turn to the Ranking Member for his opening statement.

Mr. ROONEY. Thank you, Mr. Chairman.

The Odebrecht bribery scandal is unprecedented in our hemisphere. It uncovered a systemic level of corruption that has reached every corner of Latin America and has led to the arrest and investigations of hundreds of public officials and businessmen in nearly a dozen countries. The scandal highlights the region's ongoing struggle to combat corruption, but it also presents an opportunity for the United States and our regional partners to discuss meaningful public-private sector reforms and to improve anti-corruption mechanisms and strengthen democratic institutions.

The Odebrecht scandal was discovered through the investigation known as Operacao Lava Jato, or Car Wash, which was initially launched by Brazilian authorities in March 2014 to uncover corruption within Brazil's State-controlled Petrobras oil company. Odebrecht, a Brazilian construction company, was also discovered to be providing bribes for preferential treatment in awarded contracts.

However, Odebrecht's corruption knew no boundaries and extended far beyond Brazil, from Argentina to Mexico, and as far away as Angola and Africa. Lamentably, I have personal experience with witnessing their activities in Panama. Many jobs that me and my partners were going to pursue like Tocumen Airport, we dropped off as soon as Odebrecht joined the bid list.

To date, we know that nearly 800 million in Odebrecht bribes have been accepted by government officials and candidates in ten Latin American nations. Through its in-house Division of Structured Operations—that is quite a euphemism—Odebrecht used bribes to secure construction contracts worth over \$3 billion. High-level officials have been linked to Odebrecht scandals in Colombia, Mexico, and the Dominican Republic, including links to former presidents and vice presidents in Brazil, Peru, Argentina, Ecuador, and of course Mr. Martinelli in Panama.

While no country or region of the globe is completely immune to corruption, the Odebrecht scandal highlights the pervasive corruption throughout Latin America which holds the region's civil society, governments, and economies hostage. Corruption within the government and public sector of Latin America impedes regional growth, creates artificial economic barriers, and erodes public confidence in democratic institutions. Further, this corruption and its ruinous consequences are a main driver of regional migration in the narcotics trafficking which directly affects us here in the United States.

While Latin America faces many challenges in rooting out corruption, many countries in the region have provided a framework for solutions in trying to solve their regional corruption issues. In Brazil, Transparency International, in consultation with public and private partners, has developed a package of reforms to include constitutional amendments, government institution reforms, and new rules related to corruption. Brazil's Minister of Justice has so far incorporated a number of these reforms into draft laws. Similarly, Ecuador, Colombia, and Peru have all considered anti-corruption measures in 2018.

I know that INCAE in Nicaragua and Costa Rica are working on things in connection with many of my associates in Panama to

strengthen institutions there which suffered great debility during the Odebrecht-Martinelli corruption times. The United States is also providing assistance to strengthen the institutional and technical capabilities of our regional partners to combat corruption. The State Department is working with the Department of Justice to implement programs such as the Criminal Investigative Training Assistance program and the Office of Overseas Prosecutorial Assistance and Training.

I encourage our executive agencies to continue to work together and with our partners in Latin America to offer training and assistance to better practices and good governance and rule of law. I further encourage the exchange in posting of American officials throughout the region to assist in anti-corruption and to serve as a resource for the region's governments, private sector, and financial institutions.

Civil society also plays a critical role in demanding transparency and accountability in government, and I encourage continued support for strengthening civil society's role in fighting against corruption. I commend our friends in the region who are taking meaningful steps in rooting out corruption and upholding the rule of law.

I am especially encouraged by Brazil's response to the Odebrecht scandal and by the activities that Panama is taking to try to address the time following the Odebrecht era there, and I support continued efforts to build off of these lessons throughout the region. I look forward to the testimonies and opinions of all these important witnesses today and I want to thank Mr. Chairman Sires for holding this hearing. I yield back the balance of my time.

Mr. SIRES. Thank you, Congressman Rooney.

Let me introduce, first, Michael Camilleri, Director of the Peter D. Bell Rule of Law Program at the Inter-American Dialogue. He served from 2012 to 2017 as the Western Hemisphere advisor on the Secretary of State's Policy Planning Staff and as Director for Andean Affairs at the National Security Council.

Welcome to our hearing.

We will then hear from Ms. Katya Salazar, Executive Director at the Due Process of Law Foundation where she has worked since 2004. Under her leadership, the Foundation created the human rights and extractive industries program and became involved in the defense of the inter-American system of human rights.

Thank you.

Finally, we will hear from Mr. David L. Hall who is now a partner at Wiggin and Dana after more than two decades as a Federal prosecutor with the U.S. Department of Justice. At Wiggin and Dana he advises clients concerning the Foreign Corrupt Practices Act, the False Claims Act, and the cybersecurity and data privacy, including assessment of policies and procedures as well as data breach preparation and responses.

I ask the witnesses, please, limit your testimony to 5 minutes and, without objection, your prepared written statement would be made part of the record. Thank you so much for being here today.

Mr. Camilleri, you have 5 minutes.

STATEMENT OF MICHAEL CAMILLERI, DIRECTOR, PETER D. BELL RULE OF LAW PROGRAM, INTER-AMERICAN DIALOGUE

Mr. CAMILLERI. Thank you. Mr. Chairman, Ranking Member Rooney, members of the subcommittee, thank you for the opportunity to testify today. I am honored to be here.

Corruption represents an enormous obstacle to economic development and human rights across the globe and closer to home. It weakens democracies, facilitates drug trafficking and organized crime, breeds extremism and unrest, and prompts mass migration. It also creates an unlevel playing field for U.S. businesses as the ranking member referenced.

For these reasons, I believe that combating corruption advances the U.S. national interest and a more free, secure, just, and peaceful hemisphere and world, and I commend the subcommittee for convening today's hearing.

Latin America, today, is with a few notable exceptions characterized by functional democracies. However, consolidating the rule of law is a consuming challenge and corruption remains pervasive. The Odebrecht case offers a singular opportunity to understand how corruption works in Latin America, why it happens, which countries are best equipped to combat it, and what the U.S. Government can do to help. My written submission to the subcommittee addresses all four of these issues in some detail. I will focus here on the role of the U.S. Government.

First, the basics. Odebrecht admitted to the Department of Justice that it paid \$788 million in bribes in ten Latin American and two African countries. Odebrecht's bribery was not just widespread, it was systematic. The company's secret Division of Structured Operations was set up specifically for this purpose. The bribes in question were often destined for political campaigns.

From Brazil to Mexico, Venezuela to Panama, the Odebrecht schemes had a dual impact on citizens. Not only pilfering public funds for private use, but also distorting electoral processes through illicit campaign financing. The Odebrecht case reveals a series of structural weaknesses that allow corruption to flourish in Latin America. These include a permissive environment characterized by lack of accountability and specific challenges related to public contracting, campaign finance, and the role of shell companies and offshore accounts.

The contrasting responses to the Odebrecht case are also revealing. In some countries, presidents, ministers, and CEOs went to jail; in others, investigations stalled. The judicial systems that enjoyed the greatest success were characterized by prosecutorial independence and political will, as well as technical capacity, effective use of tools such as plea bargaining, and a strong supportive role for civil society and the independent media.

So what can the United States do to support Latin America's anti-corruption fight? I will offer four recommendations based on lessons learned from the Odebrecht case. First, strengthen the Department of Justice's mandate and capacity to combat foreign corruption. The Foreign Corrupt Practices Act is one of the most underappreciated sources of U.S. soft power in Latin America. Of course, the SFPA is designed to keep corporations with ties to the

U.S. out of the business of corruption. It does not aim to police the conduct of foreign officials.

But when a citizen of Mexico or Argentina or Ecuador learns from a DOJ plea agreement that Odebrecht paid tens of millions of dollars in bribes to dirty politicians in her country, she wants to know who was on the receiving end of those bribes. I believe it should be the policy of the United States to help her find out.

Second, support proven in-country accountability mechanisms. This can be as simple as a well-timed tweet or an appearance by the U.S. Ambassador at a high-profile trial. It includes maintaining U.S. backing for international cooperation mechanisms that have proven highly effective in supporting countries with fragile judicial systems, most notably CICIG in Guatemala. And U.S. foreign assistance programs should prioritize support for independent journalism and civil society watchdog groups.

Third, maximize the impact of the Global Magnitsky Act. Staffing up the Treasury Department's Office of Foreign Assets Control will help ensure that OFEC has the bandwidth to investigate and target both corrupt foreign officials and the networks surrounding them.

And finally, lead by example. The U.S. leads best in our hemisphere when we lead by example. Unfortunately, in the past year, the United States dropped out of the top 20 countries on Transparency International's Corruption Perceptions Index. One specific way in which the United States can do more here at home is by improving beneficial ownership transparency so that shell companies cannot be used to launder dirty money through the U.S. financial system.

Thank you again for the opportunity to testify on this crucial issue. I look forward to your questions.

[The prepared statement of Mr. Camilleri follows:]

Testimony of Michael J. Camilleri
Director, Peter D. Bell Rule of Law Program, Inter-American Dialogue
Hearing on “Understanding Odebrecht: Lessons for Combating Corruption in the Americas”
House Committee on Foreign Affairs
Subcommittee on the Western Hemisphere, Civilian Security, and Trade
March 26, 2019

Chairman Sires, Ranking Member Rooney, and members of the Subcommittee, thank you for the opportunity to testify today on the Odebrecht case and the lessons it holds for combating corruption in the Americas.

The Inter-American Dialogue is a non-partisan think tank that has worked for over three decades to foster democratic governance, inclusive economic growth, and hemispheric cooperation in the Americas. As director of the Dialogue’s Peter D. Bell Rule of Law Program, I lead our work on issues of transparency and anticorruption. A component of this work is an ongoing collaboration with the Inter-American Development Bank that gathers many of the leading anticorruption experts and practitioners to analyze and distill lessons from recent corruption scandals, investigations, and reforms in the region. Today’s testimony, while reflecting my views alone, draws on this collective expertise.

Why It Matters

The World Bank calls corruption “public enemy number one” for the developing world. The United Nations observes that corruption represents an enormous obstacle to the realization of human rights, and that, unchecked, it can undermine the functioning and legitimacy of institutions, the rule of law, and ultimately the State itself. Indeed, national security leaders such as Gen. John Allen (retired) have called attention to the existential threat of rampant corruption. Across the globe and closer to home, corruption weakens democracies, facilitates drug trafficking and organized crime, breeds extremism and unrest, and prompts mass migration.

For these reasons, I believe that combating corruption advances the U.S. national interest in a more free, secure, just, and peaceful hemisphere and world, and I commend the Subcommittee for convening today’s hearing.

Latin America today is, with a few notable exceptions, characterized by functional democracies that hold credible elections and govern through constitutional frameworks that enshrine individual rights and the separation of powers. Consolidating the rule of law, however, has proven perhaps the most stubborn institution building challenge since the region transitioned out of civil wars and dictatorships in the 1980s and 1990s. One consequence is the prevalence of corruption. While there is significant variation between countries, both grand corruption and petty corruption are common in Latin America. Transparency International’s 2018 Corruption Perceptions Index assigns the region as a whole a failing grade. In fact, only three countries—Uruguay, Chile, and Costa Rica—receive passing grades.

At the same time, there are signs of progress against corruption. Most countries in Latin America have access to information laws. Almost all of them have joined regional and global anticorruption treaties. In response to recent scandals, some have sent presidents and CEOs to jail. Driving this change, fundamentally, is the mobilization of Latin American citizens themselves, with the international community playing a supporting role. Of course, the risk of backlash is ever present. Even in the wake of scandal, political elites often resist transparency reforms, sometimes for self-interested reasons, other times out of concern for political stability or economic development. These concerns are real, but for Latin America to thrive in the long run, it needs better politicians, not worse judges. Sustaining the anticorruption fight is crucial to the region’s future and our relationship with it.

In this context, the subject of this hearing, the Odebrecht case, offers a singular opportunity to understand how corruption in Latin America works, why it happens, which countries are best equipped to combat it, and what the United States can do to help. I will endeavor to address each of these issues, albeit in a necessarily simplified way.

The Odebrecht Scandal

Odebrecht, Latin America's largest construction firm, admitted in a plea agreement with the Department of Justice that between 2001 and 2016 it paid \$788 million in bribes in ten Latin American and two African countries. During this time, its sales increased close to ten-fold. Odebrecht's bribery was not just widespread but systematic. In 2006 the company created a Division of Structured Operations (DSO), a stand-alone department with separate books and communications systems that was charged with vetting bribes and making transfers to offshore accounts. Through the DSO, Odebrecht perfected the science of bribe-giving, which became central to its business model and a principal driver of growth. Research by Chilean scholars Nicolás Campos, Eduardo Engel, Ronald D. Fischer, and Alexander Galetovic shows that the creation of DSO was followed by major increases in both sales and bribe payments. In fact, they conclude that all of the \$2.4 billion in profit Odebrecht made during this period can be ascribed to bribery.

The bribes in question were often destined for political campaigns, with some officials also benefitting personally. Essentially, Odebrecht's business model provided a mechanism for taxpayer funds to be funneled into campaign coffers via inflated public contracts. This took different forms. The plea agreement describes a case in which Odebrecht won a contract by directing more than \$40 million to certain Brazilian political parties from the DSO. In Mexico, Odebrecht's country director admitted in a filmed confession to paying \$10 million to a senior campaign aid to Mexico's future president Enrique Peña Nieto (2012-2018), of which \$4 million went to the campaign. In Venezuela, the payments went not to political parties but directly to those working on campaigns. According to press accounts of confessions obtained by Brazilian prosecutors, strategists for Hugo Chávez's 2012 reelection campaign were paid \$7 million directly by Odebrecht and an additional \$11 million in cash by Venezuela's then-foreign minister, Nicolás Maduro. The same strategists were employed via similar schemes in Panama and El Salvador. In all of these cases, the Odebrecht schemes had a dual impact on citizens—not only pilfering public funds for private use but also using these funds to distort electoral processes through illicit campaign financing.

Structural Weaknesses

The modalities of the Odebrecht case reveal a series of structural weaknesses that allow corruption to flourish in Latin America, and corresponding insights into what is required to combat corruption in the region.

First, Odebrecht's systemic approach to corrupting public bidding processes across ten countries in the region could only have succeeded in a permissive environment. The company's approach assumed public officials would be willing to accept bribes, and it assumed also that auditors and prosecutors would not be capable of detecting and penalizing the schemes. Incentives were misaligned, with accountability virtually nonexistent. The sobering conclusion from the scope and modalities of the Odebrecht scandal is that grand corruption in much of Latin America remains pervasive and easy.

Second, public procurement processes suffered from a very specific weakness. Research by Campos et al. sheds light on the role of contract renegotiations in Odebrecht's *modus operandi*. They found that in the projects where Odebrecht paid bribes, renegotiations increased the value of investments by 71.3 percent, compared to just 6.5 percent in the projects where Odebrecht did not pay bribes. In many countries, infrastructure auctions were fairly competitive. The cost inflations that paid for bribes generally appeared

later, at the renegotiation stage, when contracts were amended without the same level of transparency or public scrutiny.

Third, shell companies and offshore bank accounts were fundamental to the work of the Division of Structured Operations, allowing Odebrecht's bribery scheme to be advanced by concealing and disguising corrupt payments to government officials and political parties.

Fourth, Latin American political campaigns are bedeviled by dark money. Actual campaign costs often exceed formal spending caps by degrees of magnitude. In Mexico, a study by *Mexicanos Contra la Corrupcion y la Impunidad* estimated that for every peso declared by a gubernatorial campaign, another 15 pesos in undeclared money entered the campaign, and that these campaigns cost as much as ten times as much as the legal spending cap. In Argentina, a prominent investigative journalist found that in the 2016 presidential election Mauricio Macri spent 11 times as much as he claimed to have spent, and his opponent Daniel Scioli spent almost 20 times as much as he declared. The problem, in general, is not campaign finance laws but their weak enforcement. Electoral authorities may review a campaign's official accounts for inconsistencies, but they lack the capacity or curiosity to contrast the campaign's declared receipts with evidence of its actual expenditures. The ability—and oftentimes the need—to secure large amounts of undeclared campaign cash to be competitive in Latin American elections incentivizes the kind of corruption witnessed in the Odebrecht case.

Common Schemes, Contrasting Responses

The fallout from the revelations in the Odebrecht plea agreement was swift and profound. Citizens across Latin America rightly clamored to know who amongst their public officials was on the receiving end of the bribes admitted by the company, and they demanded that these officials be held accountable. The scandal made heroes out of judges and even inspired a Netflix series. But while Odebrecht's corruption schemes and the public fury they engendered were common across the region, the resulting response has been far from uniform. In some countries, former presidents, ministers, and business tycoons went to jail. In others, investigations barely budged.

Analyzing Latin American countries' contrasting responses to the Odebrecht corruption revelations provides a telling window into the state of accountability efforts in the region. We can identify at least five factors that appear to play an important role in explaining these differences. My focus here is on the actions of judicial systems, which is not to diminish the relevance of responses in other areas such as the approval of preventive measures by national legislatures.

The first factor associated with positive accountability outcomes is prosecutorial independence and political will. In cases that implicate powerful political and business figures, the independence and zeal of judges and prosecutors is a *sine qua non*. This is achieved in different ways by the countries that have shown the greatest progress in investigating Odebrecht, from the strong structural guarantees of independence that Brazilian federal prosecutors enjoy to the existence of an independent, UN-backed investigatory commission (CICIG) in Guatemala. In contrast, investigations in Mexico have advanced slowly. When a prosecutor began gathering evidence against the official accused of funneling bribes to the campaign of President Peña Nieto, the prosecutor was fired by the presidentially-appointed attorney general. Needless to say, Odebrecht investigations in Venezuela, where the judicial system is entirely coopted by the regime of Nicolás Maduro, have gone nowhere.

Second, the innovative use of prosecutorial tools such as plea bargaining. Plea bargaining is an established tool in the United States and it is not without its critics, but it is virtually essential when investigating complex criminal structures such as the one revealed in the Odebrecht case. Plea bargaining was introduced to many Latin American legal systems more recently, and prosecutors in some countries have employed it

more effectively than others. Here again, the work of Brazilian prosecutors stands out, while legal restrictions in other countries can tie prosecutors' hands; in Argentina, for example, a plea deal can only reduce a suspect's prison sentence by half. While Honduras was not impacted by the Odebrecht case, it is no stranger to grand corruption, and legislators there have repeatedly declined to approve a law introducing plea bargaining.

Third, investigative capacity. The Odebrecht case requires investigators to analyze vast swaths of information and complex, transborder financial movements. Following the money in this case requires prosecutors and analysts to have both sophisticated training and adequate resources. The Brazilian federal prosecutor's office, for example, developed proprietary software to analyze the evidence it was collecting when an appropriate technological solution was not available on the market. At the same time, capacity alone is insufficient. Colombian prosecutors have benefitted from years of training and cooperation with the Department of Justice on complex organized crime cases, but investigations into the alleged \$33 million in bribes paid by Odebrecht in the country appear to be stalled and focused on low-ranking figures. The reasons are unclear but the attorney general has come under scrutiny given his former role as counsel for Odebrecht's minority partner in Colombia (he has recused himself from the investigation).

Fourth, international prosecutorial cooperation. At its core, the Odebrecht case is an example of groundbreaking cooperation between the Department of Justice and its counterparts in Brazil and Switzerland that combined the unique leverage of each jurisdiction, including that of U.S. prosecutors under the Foreign Corrupt Practices Act (FCPA). Investigators, especially those in the U.S. and Brazil, obtained extensive evidence of corruption implicating public officials in ten Latin American countries where Odebrecht admitted to paying millions of dollars in bribes. Prosecutors in the countries where bribery occurred have enjoyed differing degrees of success in obtaining this evidence, for reasons both justifiable (formal legal obstacles) and not (lack of interest). In Peru, for example, four former presidents are under investigation in the Odebrecht case, based in significant part on evidence developed by Brazilian prosecutors. In Argentina, in contrast, prosecutors spent years negotiating with their Brazilian counterparts about the terms of access to such evidence.

Finally, the role of civil society and the independent media. In some countries, including Peru and Brazil, investigative journalists have enjoyed a symbiotic relationship with government investigators, sometimes breaking leads where prosecutors were stymied. In Mexico, transparency and human rights NGOs have teamed with the business sector to develop sophisticated proposals for enhancing government accountability and strengthening the independence of the public prosecutor's office. More broadly, civil society has played a role in shielding prosecutors from political pressure. This was certainly the case in Brazil, where judicial officials openly acknowledged the importance of public support for their efforts. It was also the case in Peru, where the attorney general was forced to back down after his recent attempts to dismantle the team investigating the Odebrecht case.

Implications for U.S. Anticorruption Policy in Latin America

The Odebrecht case offers several lessons for policymakers considering ways the United States can strengthen its anticorruption efforts in Latin America. The recommendations that follow focus on narrow takeaways from the Odebrecht case, and do not touch on the broader, commendable efforts of the U.S. government in areas such as judicial strengthening.

1) Strengthen the DOJ's mandate to combat foreign corruption.

The Foreign Corrupt Practices Act is one of the most underappreciated sources of U.S. soft power in Latin America. First and foremost, it is a preventive tool that extends transparency norms beyond our borders via the positive example of American corporations and the standard-raising long arm of U.S. jurisdiction.

When violations of U.S. anticorruption statutes do occur, the work of the Department of Justice conveys a powerful message of accountability and rule of law. The case against Odebrecht is a prime example, as is the corruption case (based on RICO, fraud, and money laundering laws) against officials from FIFA, the world governing body for soccer. Citizens across the Americas differ on many things, but for the most part they love soccer and hate corruption. Enforcement of FCPA and related statutes puts the U.S. government firmly on the side of Latin Americans who resent corruption and are directly or indirectly victimized by it. In this regard, the FBI's recent decision to set up a dedicated squad of FCPA agents focused on Latin America is to be commended.

The FCPA is designed to keep corporations with ties to the U.S. out of the business of corruption; it does not aim to police the conduct of foreign officials. But when a citizen of Mexico or Ecuador or Argentina learns that Odebrecht paid tens of millions of dollars in bribes to dirty politicians in her country, she wants to know who was on the receiving end of those bribes. It should be the policy of the United States to help her find out. While the Department of Justice cannot simply make this information public for due process reasons, the FCPA Unit often takes impressive steps to facilitate foreign prosecutors' access to relevant evidence when legal and other circumstances allow. Nonetheless, this follow-on work is not strictly speaking within the mandate of FCPA enforcement, and both resources and incentives could be better aligned to encourage U.S. prosecutors to use the leverage provided by FCPA to obtain evidence against corrupt foreign officials, to deliver that evidence to trustworthy foreign investigators, and to help their foreign counterparts build their cases. As things stand, this cooperation is discretionary and often contingent on happenstance and personal networks.

Strengthening such cooperation can be done in a few ways. Expanding the undersized FCPA unit with additional lawyers as well as support personnel such as financial analysts and translators would provide prosecutors greater freedom and capacity to assist their foreign counterparts. These resources could be shared with the DOJ's Kleptocracy Initiative, which has a complementary mandate, and paid for with fines collected under FCPA. Incentives such as awards could be granted not just for bringing successful cases in our domestic courts, but for helping foreign prosecutors convict the public officials who took the bribes. And with expanded staffing, a secondment system could be implemented so that members of the FCPA Unit could detail for short periods to foreign prosecutors' offices to help structure cases, train their counterparts, and where appropriate, share systems and software for analyzing evidence.

2) Support proven in-country accountability mechanisms.

Amid the disparate responses to the Odebrecht corruption revelations in Latin America, there are clear bright spots: vibrant civil society organizations, dogged investigative journalists, and capable and courageous judges and prosecutors. There is much the U.S. government can do to support those who are combating corruption in the region.

The first is simply to be on the right side of the fight. A well-timed tweet or an appearance by the U.S. ambassador at a high-profile trial can provide encouragement and protection to local prosecutors and campaigners. The second is to maintain U.S. support for international anticorruption mechanisms that have proven highly effective in countries with fragile judicial systems, most notably CICIG, the UN International Commission against Impunity in Guatemala, which has helped build prosecutions in the Odebrecht case and many others. A similar OAS mission in Honduras (MACCIH) and a potential future mission in El Salvador (CICIES) proposed by President-elect Nayib Bukele are similarly worthy of strong U.S. political and financial backing. Finally, the U.S. government can support independent journalism and civil society groups that document corruption and campaign for reform. In the Odebrecht case, these actors frequently developed leads and lines of investigation and stirred the public impetus for accountability. In countries where judicial systems are weak or coopted by political forces, their role is particularly critical.

3) *Maximize the impact of the Global Magnitsky Act*

The Global Magnitsky Act is one of the U.S. government's most powerful tools for combating corruption abroad, perhaps especially so in Latin America given the region's strong ties to the United States and the stigma that attaches when elites lose access to our country. Staffing up the Treasury Department's overburdened Office of Foreign Assets Control (OFAC) will maximize the impact of this tool and help ensure that OFAC has the bandwidth to investigate and target not just corrupt foreign officials but the networks surrounding them. Members of Congress can also contribute to Global Magnitsky enforcement by referring cases for OFAC review.

4) *Lead by example.*

The U.S. leads best in our hemisphere when we lead by example. This is especially true on rule of law issues. I know from my time representing the United States at the State Department and the National Security Council that any perceived U.S. hypocrisy is easily turned against us. It is not always fair, but it is a reality. The United States is often judged by a higher standard, and we should embrace this fact. Unfortunately, in recent years we have lost some of the high ground on combating corruption. The United States fell four points on Transparency International's Corruption Perceptions Index between 2017 and 2018, and dropped out of the top 20 countries worldwide. This not only impacts the health of our domestic institutions, but also our ability to advance the national interest in combating corruption abroad.

One specific way in which the United States can lead by example is by improving beneficial ownership transparency. Odebrecht employed a system of shell companies and offshore accounts to route money from its Division of Structured Operations to bribe recipients without detection. Anonymous companies facilitate corrupt financial transactions of this kind, and in fact were used in 70 percent of grand corruption cases reviewed by the World Bank. In this area the United States itself can do more. Transparency International notes that the U.S. has no federal law generally requiring legal entities to maintain beneficial ownership information. Ongoing bipartisan efforts to close this loophole should be prioritized. Doing so will not only make it more difficult for dirty money to be laundered through the U.S. financial system, but also put our diplomats in a stronger position to press other countries to do the same.

Mr. SIREs. Thank you.
Ms. Salazar?

**STATEMENT OF KATYA SALAZAR, EXECUTIVE DIRECTOR, DUE
PROCESS OF LAW FOUNDATION**

Ms. SALAZAR. Thank you very much. Good morning and thank you again, Chairman Sires, Ranking Member Rooney, and members of the subcommittee for inviting me to testify this morning.

As it was mentioned, the Odebrecht case represents maybe the largest transnational bribery scheme ever uncovered in Latin America. The case was a difficult blow for Latin America democracies and a challenge for its judicial institutions which were not well prepared to investigate and prosecute cases of this magnitude. But it was also important because it allowed us to understand how sophisticated criminal organizations operate in the 21st century.

Latin America has robust international and national legal frameworks to combat corruption, so how could the Odebrecht scheme operate successfully for so many years? I will now present some lessons learned and recommendations arising out of this case.

First, a strong legal framework alone is insufficient and State institutions must be able, in practice, to address the challenges presented by grand corruption, which means adapting institutional designs, policies, and methodologies to new realities, the realities of the criminal organizations in the 21st century.

Second, judges and prosecutors in charge of these cases must be able to carry out their work with autonomy and free from undue interference either external or internal from within their own institutions. And this is still one of the most common problems in Latin America especially for highly sensitive cases.

Third, the *modus operandi* that has been brought to light by the Odebrecht case shows that large corruption networks seek to control criminal investigations against them and thereby guarantee impunity for their illicit actions through the control of high-level justice sector authorities especially Attorneys General and the high courts. To this end, and this is very important, such networks exert their influence on the appointment mechanism of these officials which is much easier to do when the designations are in the hands of the political powers and have little transparency and citizen participation as counterbalance.

In this context, I would like to emphasize the role of the Attorney General as a figure of fundamental importance in the fight against corruption in Latin America. It is, the Attorney General, it is an official with significant power, but also one extremely vulnerable on the face of influence of people and groups interested in shielding themselves from prosecution. In Latin America, most prosecutors are independent from the executive branch, but aside from—at least in theory. But aside from a few exceptions, the President and the Congress still have the almost exclusive power to appoint and remove the Attorney General.

Again, with few safeguards to counterbalance this power, these decisions could be—and in many cases are—arbitrary and motivated by reasons other than strengthening the rule of law. The aforementioned does not discount the need for international support mechanisms to tackle grand corruption as occurred in Guate-

mala and Honduras with CICIG and MACCIH, where there have been successes, but where the resilience of corrupt networks and their capacity to respond aggressively when their interests are at risk has also been put on display.

Although there are many more lessons to be learned from this case, I have focused my comments on the role on the judicial systems, because in my opinion the best deterrent to the commission of corruption crimes is the successful prosecution of high-profile cases involving high ranking authorities.

A few broad ideas about what the U.S. can do to support the fight against corruption in Latin America. First, through its foreign assistance, the U.S. Government should prioritize programs that support judicial independence, especially those oriented toward improving selection processes of high-level judicial authorities. U.S. diplomacy should also play a role in monitoring and making public statements on these issues when needed like it has done in Guatemala and in El Salvador.

Furthermore, the U.S. should continue supporting investigative journalism in Latin America as well as civil society organizations throughout the region, leading the investigation of corruption cases, monitoring selection processes of high-level judicial authorities, and promoting institutional reforms.

Finally, the U.S. must pay attention to the role of campaign financing and support strategic reforms in Latin America. True campaign finance reform is needed in the region to avoid repeating the history of Odebrecht. Thank you very much.

[The prepared statement of Ms. Salazar follows:]

House Committee on Foreign Affairs

Subcommittee on the Western Hemisphere, Civilian Security, and Trade

Understanding Odebrecht: Lessons for Combating Corruption in the AmericasPublic Hearing, Tuesday, 26th March, 2019

Katya Salazar

Executive Director, Due Process of Law Foundation (DPLF)

The Odebrecht case represents one of the largest transnational bribery schemes ever uncovered in Latin America, in which at least 10 countries were involved (Argentina, Brazil, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, Panama, Peru, and Venezuela).

Odebrecht, a Brazilian company dedicated to multiple industries in Brazil and abroad including construction, energy and real estate, paid at least US \$788 million in bribes to obtain multi-million dollar contracts from state-owned companies, between 2001 and 2016. Those payments were made through the company's Division of Structured Operations, which operated out of Odebrecht's accounting system and was dedicated to concealing, disguising and managing undocumented money to be used in improper payments to politicians, political parties and government officials throughout the region. The money was used mainly to support political campaigns and ensure the company undue advantages in future public biddings and contracts.

The case was a difficult blow for Latin American democracies and a big challenge for its judicial institutions, which were not well prepared to investigate and prosecute cases of this magnitude and reach. But this case is also important because it allowed us to understand how sophisticated criminal organizations have become in the 21st century and the way they operate. We are not talking about mafia-type organizations with a unique boss and multiple operators, but a much more complicated network of people, frontmen, companies, off-shore entities, banks, government

officials, judges, politicians, private operators, and others acting as a coordinated “operating system” designed to use state wealth for private gain.

This case also touched upon a very sensitive topic, which is how political campaigns are funded. The Odebrecht case showed that national norms regulating private funding for political parties are outdated and need to be revised and fine-tuned.

Latin America has robust international and national frameworks to combat corruption. In spite of that, the Odebrecht scandal occurred. What were the main factors that allowed this scheme -and others like it- to be carried out and to remain basically in impunity with few exceptions? What can we do? I will now present some ideas and lessons learned:

First, a strong legal framework alone is insufficient. Judicial institutions should be designed to address the challenges presented by grand corruption. Specifically, it would be wise to strengthen the units or bodies in charge of the investigation, prosecution and adjudication of these crimes. These should be composed of specialized judges and prosecutors, with the support of other specialists in economics, finance, and social sciences – fields which are necessary to fully understand the functioning of structures as complex as those currently presented in cases of grand corruption.

Second, judges and prosecutors in charge of the investigation, prosecution and adjudication of these crimes should be able to carry out their work with autonomy and free from undue pressure, conditions, or interference, either external or internal (that is, from within their own institution). This implies not only that these judges and prosecutors enjoy functional autonomy, including with regards to their superiors, but also that their work is protected with safeguards that prevent them from being unjustifiably removed from cases, fired without cause, transferred, or reassigned by government bodies for the purpose of hindering or delaying investigations.

Additionally, it is necessary to implement protection mechanisms for judges and prosecutors who carry out investigations and legal processes regarding grand corruption, who need to adequately

ensure their safety against possible threats and attacks on their lives and integrity, and that of their families. The investigations for which these prosecutors and judges are responsible often reach people and groups with economic and political power, who are part of organized criminal networks, and who can use threats and even carry out attacks against these justice sector officials in order to ensure their own impunity. Protection guarantees must be also be given to witnesses and collaborators.

The *modus operandi* that has been brought to light by the Odebrecht case shows that large corruption networks seek to control the criminal investigations against them and thereby guarantee impunity for their illicit actions, through the control of high-level justice sector authorities, especially Attorneys General and the high courts. To this end, these networks exert their influence on appointment mechanisms, which is much simpler when the designations are in the hands of the political powers and have little guarantee of transparency and citizen participation.

For this reason, in countries where corruption has reached structural levels and has permeated the political system, the political mechanisms of selecting high-ranking justice sector officials are a vulnerable point in the democratic system – because it is through these that corrupt groups exercise the influence that subsequently translates into impunity. It is therefore essential that mechanisms for the appointment of high-ranking judicial authorities have enhanced guarantees of transparency, meritocracy, and publicity, and that there be spaces for maximum citizen scrutiny.

These same principles should apply regarding mechanisms for dismissal, especially when they are controlled by the political powers, because they can be used by corrupt operating systems to punish or fire those high officials who achieve significant advances in the investigation of their illicit actions.

To be clear, the strengthening of appointment and removal mechanisms, and the allowance for broad citizen scrutiny at both stages, is crucial to diminish the possibilities of undue influence of

corruption networks, and to permit those who accede to these positions to be well-qualified, capable individuals with the integrity and temperament to respect the law and pursue cases of grand corruption.

The Attorney General is a figure of fundamental importance in the fight against corruption in Latin America. The leader of a highly hierarchical institution with the ability to give general instructions to prosecutors in charge of corruption investigations, and with the authority to personally take on cases of high social impact, the Attorney General is an official with enormous power, but also one extremely vulnerable in the face of the influence of people and groups interested in shielding themselves from prosecution.

In Latin America, most prosecutors are independent from the executive branch, but aside from a few exceptions, the president and the legislature still have the almost exclusive power to appoint and remove the Attorney General. With few safeguards to counterbalance this power, these decisions could be -and in many cases are- arbitrary and motivated reasons other than strengthening the rule of law.

Prosecutors' offices tend to be institutions with little transparency and little control and accountability mechanisms *vis-à-vis* the citizenry. This institutional culture, which also suffers from an absence of strategic planning in the identification of high impact cases and a lack of criteria for the prioritization of the most important investigations to dismantle corruption networks, means that the successes that some Latin American prosecutors have managed to obtain (for example, in Brazil, Peru and Guatemala) are still precarious, and that they may be insufficient to attack the very heart of criminal networks, much less dismantle them.

In relation to the role of Attorneys General, the Odebrecht case has taught us important lessons: (i) that grand corruption networks are not indifferent to the election of Attorneys General; rather, they seek to influence such appointments, in order to have control over the investigations against

them; but also (ii) that autonomous Attorneys General allow for independent investigations that can significantly undermine corruption networks.

The aforementioned does not rule out the need for international support mechanisms to tackle Grand Corruption, as occurred in Guatemala and Honduras with CICIG and MACCIH, where there have been successes but where the resilience of corrupt networks and their capacity to respond aggressively when their interests are at risk has also been put on display. This shows that international cooperation and support is fundamental to attack grand corruption.

Although most of my comments have focused on the role of judicial systems in combating grand corruption, there are of course other lessons to be learned outside of this area. But the role of the justice sector is particularly important because we do believe that the best deterrent to the commission of corruption crimes is the successful prosecution of high-profile cases. As long as citizens see that corrupt actors do not enjoy impunity, the incentives to engage in corruption will be weakened.

Mr. SIREs. Thank you.
Mr. Hall, 5 minutes.

**STATEMENT OF DAVID HALL, PARTNER, WIGGIN AND DANA
LLP**

Mr. HALL. Thank you, Mr. Chairman. Chairman Sires, Ranking Member Rooney, and members of the subcommittee, thank you for the opportunity to appear today.

On December 21st, 2016, Odebrecht and its petrochemical unit Braskem each entered a guilty plea to one count of conspiracy to violate the Foreign Corrupt Practices Act. The U.S. Government estimated that Odebrecht conspired to pay approximately \$788 million in bribes in association with more than a hundred construction projects in 12 countries, mostly in Latin America.

The global investigation of this scheme has ensnared almost a third of Brazil's government ministers, two former presidents of Brazil, two former presidents of Peru, a vice president of Ecuador, and many, many others. This conspiracy is nothing short of astonishing in scale. If somebody wrote a movie about it, I would not believe it. And it is not a one-off event and it did not result from the actions of a few rogue employees or officials. It could hardly have been more systematic and sustained.

The company, Odebrecht, actually created a bribery department, which was known as the Division of Structured Operations, for the specific purpose of operating the corrupt scheme and laundering money. The scheme came to light in 2014 after allegations of money laundering revealed that money dealers operating out of gas stations and car washes were working on behalf of an executive at Petrobras, the Brazilian petroleum corporation.

Brazilian law enforcement initiated Operation Car Wash and discovered that Petrobras directors had been overpaying on contracts in order to fund kickbacks that were then deposited into a secret slush fund. This slush fund was used, in turn, to bribe politicians. Significantly, and unlike many FCPA cases prosecuted in the United States, this case originated from an investigation that began outside the United States by non-U.S. authorities.

In the past, the U.S. often stood alone in its anti-corruption efforts, and as a result, other nations did not enforce similarly robust anti-corruption laws. Some believed that the FCPA placed U.S. companies at a disadvantage in global commerce compared to international competitors that were not similarly constrained in behavior and did not operate under the financial burden of FCPA compliance and recordkeeping requirements.

All this might be changing. The Odebrecht case itself implies as much given the extensive and effective anti-corruption effort displayed by a magnitude of foreign nations. If these trends continue, it is good news for U.S. business operating on a global playing field because that playing field might become more level.

There is much that the United States can do to take advantage of this momentum. For one thing, it can continue enforcing the FCPA against foreign corporations as well as domestic ones. But the degree of difficulty faced by U.S. enforcement and regulators in investigating conspiracies on foreign soil is very high. This is why

it is so important that foreign governments are increasing their efforts in anti-corruption enforcement.

The United States can directly assist foreign authorities in anti-corruption investigations and enforcement, and the best way to do this is to have U.S. investigators and prosecutors on the ground in foreign countries developing relationships with their foreign counterparts. This sort of integration can be accomplished by expanding the scope of attache programs such as those at the Justice Department, the FBI, and the Department of Homeland Security, as well as expanding the scope of other programs including State Department programs that have already been mentioned.

The United States has long been at the forefront of prosecuting anti-corruption cases and is now presented with a new opportunity to partner effectively with foreign governments in enforcing anti-corruption laws. Thus, the Odebrecht case might, with a little luck, portend the beginning of more effective and more fair global anti-corruption law enforcement. Thank you very much for your attention and I look forward to your questions.

[The prepared statement of David Hall follows:]

PREPARED TESTIMONY

of
David L. Hall
Partner, Wiggin and Dana
Before the
Subcommittee on the Western Hemisphere
Committee on Foreign Affairs
United States House of Representatives

“Understanding Odebrecht: Lessons for Combating Corruption in the Americas”

Chairman Sires, Ranking Member Rooney, and Members of the Committee:

Thank you for the opportunity to appear before you today for this hearing: “Understanding Odebrecht: Lessons for Combating Corruption in the Americas.”

My name is David L. Hall, and I am a partner at the law firm of Wiggin and Dana LLP. Prior to joining Wiggin and Dana, I served as an Assistant United States Attorney with the Department of Justice for 23 years. I am also a retired naval intelligence officer, having served in the Navy for thirty years, active and reserve.

Opening Remarks

On December 21, 2016, Odebrecht S.A. and its petrochemical unit Braskem S.A., each entered a guilty plea in the Eastern District of New York to one count of conspiracy to violate the Foreign Corrupt Practices Act (“FCPA”).¹ In the charging Information, the government alleged that Odebrecht conspired to “corruptly provide hundreds of millions of dollars in payments and other things of value to ... foreign officials, foreign political parties, foreign political party officials and foreign political candidates to secure an improper advantage” and to influence those officials and parties “in order to obtain and retain business in various countries around the world.”² The U.S. Government estimated that Odebrecht conspired to pay approximately “\$788 million in bribes in association with more than 100 projects in twelve countries, including Angola, Argentina, Brazil, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, Mozambique, Panama, Peru and Venezuela.” The global investigation into this scheme has ensnared almost a third of Brazil’s government ministers; two former presidents of Brazil; the vice-president of Ecuador; a former vice-minister for transport and a former senator in Columbia; two ex-presidents in Peru, and over seventy executives at Odebrecht, among others. Odebrecht agreed to pay a criminal penalty of \$2.6 billion and Braskem agreed to pay a penalty of over \$632 million.³

The Odebrecht bribery conspiracy was astonishing in scale. And it not a one-off event, nor did it result from the actions of a few rogue employees or officials. It could hardly have been more

¹ The respective plea agreements are available at <https://www.justice.gov/opa/press-release/file/919916/download>; <https://www.justice.gov/opa/press-release/file/919906/download>.

² In addition to the plea agreements, the Odebrecht charging Information (available at <https://www.justice.gov/opa/press-release/file/919911/download>) contains an extensive factual recitation of the scope and nature of the Odebrecht bribery scheme.

³ *Supra* notes 1 & 2.

systematic and sustained. The company actually created what was essentially a bribery department, known ominously as the “Division of Structured Operations,” for the specific purpose of executing the corrupt scheme. This division of the Company acted like any traditional criminal conspiracy by operating in secret -- including using codenames and bespoke software and communications systems. Yet, in others ways, it acted like a traditional business division, using spreadsheets and payment management platforms, to track and manage the payment of bribes around the world.

The Division of Structured Operations also engaged in extensive money laundering, paying bribes by funneling money through a variety of offshore entities, utilizing smaller banks located in countries with strict banking secrecy laws, including Antigua and Panama. Using these funds, Odebrecht would rig bids, influence public projects for its own benefit, avoid repercussions from problems encountered on construction projects, and secure public contract work around the world. As the scheme grew, members of the conspiracy actually purchased a branch of an Austrian bank located in Antigua. Using this captive branch, corrupt officials could open an account and receive payments directly.

The Odebrecht Investigation

The scheme began to come to light in 2014 after allegations of money laundering revealed that money dealers operating out of gas stations and car washes were working on behalf of an executive at Petrobras, a petroleum corporation largely owned by the government of Brazil. Brazilian law enforcement initiated Operation Car Wash (Lava Jato) and discovered that Petrobras directors had been overpaying on contracts to fund kickbacks that were deposited in a secret slush-fund controlled by those directors. By following the path of the money, investigators discovered that that slush fund was used to bribe the politicians who had appointed the Petrobras directors to their positions and to fund their own election campaigns.⁴

The investigation would eventually implicate those at the highest levels of Brazil’s government. In 2018, former President Luiz Inacio Lula da Silva started serving a 12 year prison sentence following his 2017 conviction for corruption and money laundering.⁵ On March 21, 2019, former President Michel Temer was arrested on bribery charges relating to \$472 million in kickbacks related to construction projects.⁶

A key factor in the success of investigators in identifying the depth and breadth of this corrupt scheme was a recent change in Brazilian law, allowing prosecutors to offer leniency in exchange for a defendant’s cooperation. This new tool, combined with an increased use of “preventive detentions,” which kept suspects in custody pre-trial, allowed investigators to elicit cooperation

⁴ See Mimi Whitefield, *Brazil Engulfed in a Corruption Scandal with Plots as Convoluted as a Telenovela*, available at <https://www.miamiherald.com/news/nation-world/world/americas/article171222962.html>.

⁵ <https://www.cnn.com/2017/07/12/americas/brazil-lula-da-silva-conviction/index.html>;
<https://www.cnn.com/2013/08/05/world/americas/luiz-inacio-lula-da-silva-fast-facts/index.html>

⁶ <https://www.nytimes.com/2019/03/21/world/americas/michel-temer-arrested-prisao.html>;
<https://www.reuters.com/article/us-brazil-corruption/brazils-former-president-michel-temer-arrested-source-idUSKCN1R21JW>

from suspects, including conducting sting operations such as one that captured a recording of a corrupt senator offering to arrange a jailbreak.⁷

As the nature of the corrupt scheme was revealed, investigators uncovered evidence that Odebrecht, Latin America's largest construction firm, had been involved in Petrobras' contract over-pricing and kickback scheme. In June 2015, Brazilian law enforcement arrested Odebrecht's CEO Marcelo Odebrecht, along with three other high level executives. In March of 2016, Marcelo Odebrecht was sentenced to 19 years in prison for paying more than \$30 million dollars in bribes to Petrobras executives.⁸ Subsequently, Marcelo Odebrecht cooperated with prosecutors in an effort to reduce his sentence.

The Brazilian Federal Police continued to investigate Odebrecht and, despite efforts to destroy or conceal evidence, gained access to an e-mail account used by an Odebrecht executive who worked in the Division of Structured Operations, which lead to a trove of hard copy spreadsheets detailing the Division of Structured Operation's activities. By following the investigative threads that started in a car wash, Brazilian authorities were able to discover a global network of corruption.⁹

Despite the magnitude of this scheme, its connections to the United States were, by comparison, relatively limited. As set forth in the charging Information, some of the entities used by the Division of Structured Operations were "established, owned and/or operated by individuals located in the United States," certain members of the conspiracy conducted meetings on U.S. soil, and some payments were disbursed from U.S. based bank accounts. Significantly, Odebrecht owned 50.11% of the voting shares and 38.1% of the total shares of Braskem S.A., a petrochemical company headquartered in Sao Paulo, Brazil. Shares of Braskem were traded on the New York Stock Exchange and Braskem was required to file annual reports with the SEC. Braskem was, thus, an "issuer" as defined by the FCPA and, unsurprisingly, did not disclose the benefits it received from participating in the Odebrecht bribery scheme to its investors or to U.S. regulators.

Global Changes in Combating Corruption

Significantly, and unlike many FCPA cases prosecuted in the United States, the Odebrecht case originated from an investigation outside of the United States conducted by foreign authorities. Typically, FCPA prosecutions and enforcement actions arise out of investigations initiated and conducted by U.S. law enforcement. This makes sense historically, given the leadership of the United States in the fight against global corruption – starting with the enactment of the FCPA.

But, in the past, the United States often stood alone in its anti-corruption efforts. Other nations did not have or enforce similarly robust anti-corruption laws. Compounding this problem,

⁷ See Dilma Rousseff Luiz Inácio Lula da Silva, *Operation Car Wash: Is this the biggest corruption scandal in history*, available at <https://www.theguardian.com/world/2017/jun/01/brazil-operation-car-wash-is-this-the-biggest-corruption-scandal-in-history>.

⁸ See *Brazil Petrobras scandal: Tycoon Marcelo Odebrecht jailed*, available at <https://www.bbc.com/news/world-latin-america-35753774>.

⁹ See Michael Smith, Sabrina Valle, and Blake Schmidt, *No One Has Ever Made a Corruption Machine Like This One* available at <https://www.bloomberg.com/news/features/2017-06-08/no-one-has-ever-made-a-corruption-machine-like-this-one>.

cooperation from the international community was often limited as those countries sought to protect their own companies from the reach of U.S. extraterritorial jurisdiction.¹⁰ Given the United States' aggressive position on anti-corruption, some believed that the FCPA placed U.S. companies at a disadvantage in global commerce, compared to international competitors that were not similarly constrained in behavior, and that did not bear the financial burden of FCPA compliance and record keeping requirements. Thus, concluded the critics, the FCPA – as laudable as its goals are -- has disadvantaged U.S. business in global markets.¹¹

This might be changing. The Odebrecht case itself implies as much, given the extensive anti-corruption effort exerted by a multitude of foreign nations. In addition, anti-corruption laws are changing in many other nations. For example, India recently amended its Prevention of Corruption Act to target bribe-givers, who could previously only be prosecuted indirectly through the Act's abetting provisions.¹² Thailand has amended its anti-corruption laws, bringing the country's anti-corruption regime in line with the 2003 UN Convention Against Corruption.¹³ In 2015, South Korea enacted its Improper Solicitation and Graft Act, which specifically prohibits certain categories of gifts to "public officials."¹⁴ France's newly passed Sapin II bill brings that country's anti-corruption regime closer in line with that of the U.S. and the U.K.¹⁵

If these trends continue, it is good news for U.S. businesses as the global playing field will become more level.

Continuing the Fight

There is much the United States can do to take advantage of this momentum. For one thing, it can continue enforcing the FCPA against foreign companies as well as domestic ones. A review of the largest FCPA penalties imposed by the U.S. government shows that the majority of the largest fines have actually been imposed against non-U.S. companies.¹⁶ In pursuing these types of enforcement actions, the United States can hope to induce foreign companies to implement and enforce robust anti-corruption policies and, thus, play by the same set of rules as U.S. companies.

¹⁰ See International Business Transactions Committee the Association of the Bar of the City of New York, *The FCPA and its Impact on International Business Transaction*, available at <https://www2.nycbar.org/pdf/report/uploads/FCPAImpactonInternationalBusinessTransactions.pdf>. (noting the difficulty in securing cooperation from other countries, and discussing the possible factors which can shape a country's anti-corruption policies).

¹¹ See Rachel Brewster, *Enforcing the FCPA: International Resonance and Domestic Strategy*, 103 Va. L. Rev. 1611, 1628 (2017) (discussing the reactions to the passing of the FCPA and its potential effect on businesses' abilities to compete internationally).

¹² Calvin Chan & Jun Yi Ho, *Significant Updates to India's Anti-Corruption Law*, available at <https://www.reedsmith.com/en/perspectives/2018/10/significant-updates-to-indias-anti-corruption-law>.

¹³ *Anti-Corruption in Thailand: new amendment strengthens rules on corporate bribery*, available at <https://www.nortonrosefulbright.com/knowledge/publications/90774c33/anti-corruption-in-thailand-new-amendment-strengthens-rules-on-corporate-bribery>.

¹⁴ Catherine E. Palmer, Daisuke Yoshida & Junyeon Park, *Expansive Korean Anti-Corruption Law Comes into Force*, available at <https://www.tw.com/thoughtLeadership/LW-korean-anti-corruption-law-comes-into-force>.

¹⁵ Alexandre Bailly & Xavier Haranger, *Sapin II Law: The New French Anticorruption System*, available at <https://www.morganlewis.com/pubs/sapin-ii-law-the-new-french-anticorruption-system>.

¹⁶ Brewster, *supra* note 9, at Table 1.

Still, the degree of difficulty faced by U.S. law enforcement and regulators in investigating clandestine conspiracies on foreign soil is high. This is why it is so important that foreign governments are increasing their efforts in anti-corruption enforcement. We could be at a pivotal moment giving rise to a unique opportunity to increase cooperation with foreign anti-corruption authorities. Using the Odebrecht case as a framework, we can see what the U.S. role in assisting anti-corruption enforcement internationally might look like.

As a threshold matter, the United States can assist other nations in implementing an effective anti-corruption regime by enacting robust anti-corruption laws. The United States can encourage this in a number of ways including providing assistance in drafting legislation and developing effective enforcement mechanisms. The United States can also directly assist foreign authorities in anti-corruption investigations and enforcement. Again, the Odebrecht case provides a good example of how international law enforcement cooperation can be mutually advantageous. What started as a money laundering investigation involving car washes and gas stations turned into the largest international corruption case in history. Foreign law enforcement agencies exhibited a high – and highly commendable – degree of competence and tenacity in this investigation. U.S. law enforcement authorities, accustomed to taking the lead in this type of investigation, can themselves benefit from working with such skilled partners. The United States can also assist by providing training on how to conduct effective corruption investigations. As illustrated by Odebrecht's bespoke software platforms used to manage its Division of Structured Operations and its efforts to destroy or conceal evidence, cutting edge investigative tactics will be vital in pursuing sophisticated anti-corruption prosecutions in the future. The United States is in a position to use its knowledge and resources to help foreign law enforcement agencies analyze international commercial and banking transactions, and help unravel the tangled pathways that bribes can travel.

By working with other countries to enforce their own anti-corruption policies, the U.S. also increases the likelihood of success in domestic prosecutions under the FCPA. As the Odebrecht case demonstrated, it is possible that a corrupt scheme originating abroad might use the U.S. banking system, involve U.S. based partners, or otherwise implicate companies subject to U.S. laws and regulations. But the best evidence of these U.S.-based criminal activities might actually be located overseas. The best way to gather this evidence is to have U.S. investigators and prosecutors on the ground in foreign countries developing relationships with their foreign counter-parts. This sort of integration can be accomplished by expanding the scope of attaché programs such as those of the Justice Department, the FBI, and the Department of Homeland Security.

The United States has long been at the forefront of prosecuting anti-corruption cases, and is now presented with a new opportunity to partner effectively with foreign governments in enforcing anti-corruption laws. Thus, the Odebrecht case might – with a little luck – portend the beginning of more effective and fairer global anti-corruption law enforcement.

Thank you for your attention.

Mr. SIREs. Thank you, Mr. Hall.

Before we question, I would like to recognize the former chairman of the Western Hemisphere Subcommittee, Connie Mack, who is in the audience today. We worked very well together when he was chairman, from Florida.

You know, this is a topic of interest to me for many years, the corruption in the Western Hemisphere. I really think that some of these countries have been set back for so many years because of the constant corruption that you read about it. So, when I came to Congress and tried to encourage attention to the Western Hemisphere and tried to encourage people to have money to help some of these countries because they really do need it, the question of corruption always surfaces.

Why should we give money to countries that are so corrupt that the money that we give them may not go to the initial plan that we originally want it to? And, you know, it is a tough question to ask when you try to increase funding for these countries, and then we have this huge corruption case with Odebrecht.

Mr. Camilleri, I am interested in how these bribes made it through the banking of the United States and how was it that they were able to do this and it took us so long to pick up on this. Can you answer that?

Mr. CAMILLERI. Thank you, Mr. Chairman, and thank you for your longstanding interest and concern for this issue and for convening the hearing.

There were, within the Odebrecht conspiracy, acts that took place on U.S. soil. Those included meetings of Odebrecht executives. It included money that found its way into our financial system. Odebrecht, however, was pretty systematic about how it used this Division of Structured Operations to have the bribes paid and did things, for example, like acquiring a bank on a small Caribbean island which it used in order to deposit many of these payments into the bank accounts affiliated with the corrupt politicians they were looking to pay off.

So while some of the money did find its way into the U.S., much of it was routed elsewhere. The issue that I mentioned in my testimony is an important one. Beneficial ownership transparency is critical to allowing the law enforcement to scrutinize these financial flows, and it will, I think, just as importantly put the United States in a much stronger position to then go to other countries where this sort of thing is happening and ask them to take the same steps that keep shell companies, in order to keep shell companies from being used as a route for illicit financial movements.

Mr. SIREs. Thank you. I am concerned that this administration and previous administrations really did not speak up strongly enough on some of these issues in some of these countries.

For example, Ms. Salazar, can you speak to the fact that CICIG was kind of pushed out of Guatemala and what are the repercussions of that?

Ms. SALAZAR. Well, thank you. This is a very important question, Mr. Sires, because CICIG was a very important institution, not just for Guatemala but for the whole region for two main reasons. First of all, because it helped Guatemala to uncover these criminal organizations networks and how they operated, but they also showed

the region that it is possible to do something to fight against corruption, to prosecute the corrupt.

From the perspective of a Latin American expert on judicial reform, I have to say that I felt very disappointed for the decision of the U.S. Government to, you know, not give an unconditional support to CICIG. It was really sad.

As you know, the head of the CICIG is living in New York right now and the CICIG will finish its mandate at the end of the year. And we expect that the U.S. Government can reflect about the lessons learned of the CICIG because there are other similar initiatives moving around the region. In Ecuador, the President of Ecuador, for example, has offered to create a similar institution. In El Salvador, the new President has offered to create also a kind of CICIG.

So I think it is important to take seriously the lessons learned from the CICIG and support it. In general, international corporation to combat corruption is a good idea. The bad idea is like thinking that there is a one-size-fits-all method, because we need to analyze what are the particularities of each country. But I think with all due respect that the U.S. Government should support these kinds of initiatives which bring international support to our countries.

Mr. SIRE. Thank you.

I now recognize the ranking member, Congressman Rooney.

Mr. ROONEY. Thank you, Mr. Chairman. You know, I have been doing business around the world since 1975 in my family companies and when the FCPA came in we did not think much of it. It added a lot of complexity to our work in many parts of the world, but I have got to tell you, reading this stuff and hearing this testimony and watching the Odebrecht thing impact in Latin America, makes me really appreciate one of the subsidiary roles of the FCPA was to attack the culture of corruption. Not just specific instances, but the culture of corruption.

And I just wonder, Mr. Hall and Mr. Camilleri, you know, Brazil is known for the jeito and the culture of corruption and how does that kind of culture contribute to what Odebrecht did and some of their competitors, who I am not going to mention right now, and how will that culture impede the Brazilian Government's efforts to improve things now?

Mr. HALL. Thank you, Mr. Rooney.

I think it is clear that a culture of corruption is what leads to the criminal behavior. And in the case of Brazil, I would say that the Odebrecht case, what we have learned about that one conspiracy, the part that is public so far, demonstrates that that does exist. I think that one of the—and I say this as sort of a law enforcement traditionalist—is that one of the positive effects from law enforcement actions like this, and particularly effective multilateral law enforcement actions like this, is to create a deterrent effect and to change the standard.

The problem with the culture of corruption is that it corrodes standards. It lowers them and it makes it seem OK to do things that people individually might understand is not the right thing to do, but it is the easy thing to do and I am probably going to get away with it. When law enforcement is effective in holding people

to a higher standard or holding companies and institutions and government agencies and government officers to a higher standard, it creates a deterrent but it also creates an incentive to hit that higher standard.

Mr. ROONEY. Thank you, Mr. Hall.

Mr. Camilleri?

Mr. CAMILLERI. Thank you, Congressman. The Odebrecht case could only have happened in a culture of pervasive corruption. You only set up a dedicated bribe unit and pay hundreds of millions of dollars of bribes if you are pretty sure you can get away with it. This was not something that was exceptional that was a case of a few bad apples in the company. It was something that was pre-meditated, structured, systematic.

So, I think your question goes to the heart of what the case revealed. In terms of how it might be changing, I think, and very much consistent with what Mr. Hall said, first of all, incentives are changing. The very fact that this case exists and the fact that prosecutors in many countries, not all in Latin America, have sort of taken up what the DOJ did and pursued the cases at the local level, creates a different set of incentives, so that is positive.

We have heard anecdotally that business culture may be changing in some places, that the sting of the Odebrecht case is being felt and that the business community is pushing back against being shaken down for bribes. I think we will have to see on that, but it is positive that noises are being heard.

And then the other piece of this obviously is political policy reform that is the preventive strengthening the frameworks and the enforcement mechanisms, and Katya spoke to this. I think, there, it is going to be more challenging, frankly. In Brazil, the current Justice Minister is former Judge Moro. He was kind of the hero of the Odebrecht case, the Lava Jato case at the local level. He has already had to water down the set of anti-corruption reforms that he presented to Congress because it is very hard it turns out to get the folks who are part of the system to then reform that system.

So I think there is positive news, but also some wait and see and a lot we need to do to kind of stay on this issue.

Mr. ROONEY. Thank you.

Can I have one more little bit?

To followup on what Mr. Hall and you said as well, Mr. Hall, about the—you mentioned DOS and DOJ programs. How would you assess the level of cooperation across the different programs in the U.S. Government and what things have been most effective?

Mr. HALL. Of course I can only speak from my experience, and I should point out that I did retire from the government 5 years ago so maybe it is a little dated, but I did serve for 23 years. I had a lot of experience with international investigations and, generally speaking, I would describe the programs really as nascent. There are programs in place. I have seen them work very effectively in terms of training, in terms of advice.

What I think we can do better is to actually integrate our, you know, operations with foreign law enforcement in a more sustained way than we do right now. Right now, based on my experience, it is very ad hoc. So, my experience would be I would have an investigation into a transnational crime and I would, you know, basi-

cally establish a bilateral relationship with a counterpart in a foreign country and we would try to work together using, you know, our different sets of laws and try to merge them so that we could, you know, work effectively together.

But it really was very ad hoc and, essentially, I was talking to a stranger. I was trying to make friends but we did not really know each other. What would be better would be to have more attaches on the ground, because the job of an attache is to establish those kinds of relationships so that when a field prosecutor like me shows up and says, here is what I want to do, the attache knows who to call.

And I have seen that work well where there are attaches and particularly where there are good ones who really do have those kinds of relationships and really can make that work.

Mr. SIRES. Thank you, Mr. Hall.

Congressman Espaillet.

Mr. ESPAILLAT. Thank you, Mr. Chairman, Ranking Member.

So Brazil, Venezuela, the Dominican Republic, Panama, Angola and Argentina, Ecuador, Peru, Guatemala, Colombia, Mexico, Mozambique, and several other countries that allegedly have been involved in this major scandal. My first question is, are there any—Mr. Hall, this is to you. Are there any current prosecutions, open prosecutions in the U.S. Federal system of cases, directly connected to the Odebrecht case?

Mr. HALL. Since I am no longer with the government I do not actually know the answer to that authoritatively. My understanding is the answer to that is yes, is that the investigation is continuing. I am confident that—with what we have just seen with, you know, recent events in Brazil—that the investigation certainly is continuing overseas and my understanding is that it is here too.

Mr. ESPAILLAT. So here in the U.S. circuits of Federal courts there are open investigations?

Mr. HALL. Yes. And not anything that is charged, but my understanding is that the investigation does continue.

Mr. ESPAILLAT. OK. My second question is we have seen what has happened with CICIG and MACCIH. Ms. Salazar, there seems to be a resistance in Latin America, because of the history of Latin America, outside groups coming in to tell locals what to do. I happen to think that in some of those countries there are many good people in the civil society that want to battle and combat corruption, nonpartisan people, people of goodwill, good government folks that want to really combat corruption.

Do you have like a model, is there a model that functions sort of like outside of the CICIG/MACCIH structure that involves local people that could be impartial and really have ownership and skin in the game to combat corruption like the Odebrecht corruption in these countries?

Ms. SALAZAR. Yes, Mr. Espaillet. And, actually, there are different models that can be used to support a particular country using international law and international mechanisms. CICIG and MACCIH are just one more, but there are many others promoted by United Nations, by the Organizations of American States, which includes a different level of international personnel and inter-

national law or international mechanisms involvements. For example—

Mr. ESPAILLAT. But what about locally, because I think that—

Ms. SALAZAR. Yes.

Mr. ESPAILLAT [continuing]. People see international entities or folks from outside the country as interventionists in some way. But I feel that in those countries there are good people that want to battle corruption. Is there a model that will bring in good folks that will combat—

Ms. SALAZAR. Well—I am sorry. Actually, in CICIG and MACCIH there are many local people. Not all of them are foreigners. So I mean, I do not think, I mean the leaders, the heads of the institutions—

Mr. ESPAILLAT. Right. The leadership, right.

Ms. SALAZAR. The leadership maybe are people from other countries, but there are many locals in the institutions. But what I wanted to say again there are different models. There is not just one model that we need to apply. For example, and this is connected with what Mr. Hall say, there are countries where, you know, their general prosecutors' offices have been opened to receive international cooperation, international legal assistance, people from abroad but work with the local.

Mr. ESPAILLAT. Yes, but usually those local prosecutors' office are appointed by the local government and they may themselves be involved in corruption. But what about having an entity, an impartial nonpartisan entity in a—is there anything that works out there?

Ms. SALAZAR. For me, CICIG has worked.

Mr. ESPAILLAT. OK.

Ms. SALAZAR. For me, for example, the International Commission of Human Rights belonging to the Organization of American States has an initiative called Grupo de Expertos, group of experts, and they have created this group of experts to send to Nicaragua and to Mexico—

Mr. ESPAILLAT. OK.

Ms. SALAZAR [continuing]. To analyze the case of the 43 students disappeared. These initiatives were a kind of combination—

Mr. ESPAILLAT. I see, thank you.

Ms. SALAZAR [continuing]. And they work also.

Mr. ESPAILLAT. I have one last question for Mr. Hall. You mentioned there was a bribery department, right, sort of like structure for this. Where was this department and who headed it?

Mr. HALL. It was a department of Odebrecht and it was literally created for the purpose of organizing in a corporate way the payment of—

Mr. ESPAILLAT. Where was it based, yes?

Mr. HALL. I believe in Brazil.

Mr. ESPAILLAT. And who headed it?

Mr. HALL. I do not know the answer to that.

Mr. ESPAILLAT. OK. Thank you.

Thank you, Mr. Chairman.

Mr. SIRE. Congressman from Florida, Ted Yoho.

Mr. YOHO. Thank you, Mr. Chairman. Thank you all for being here, I appreciate it.

And to me it is fascinating to see the level of corruption around the world, and I think a universal truth is all governments are made up of people one way or another and whenever people are involved there is always a level of corruption involved. And we can look at our own government in our own country, so we are not excluded from that. And it is just, the sad thing to me is that it robs the individuals in those countries of the resources of that nation, whether it is Maduro in Venezuela or in this case in Brazil, and I look over the years the level of corruption that goes on.

And I read an article yesterday in the Wall Street Journal. It says since Brazil's return to democracy in 1985 after a military dictatorship, four of the eight presidents who took office have now fallen afoul of the country's law, either impeached for misconduct or arrested after leaving office. Mr. Temer's arrest is further evidence of a crisis in Brazilian democracy according to Marcelo Freixo, a Member of Congress for the left-wing Socialism and Liberty Party.

This is what I find interesting and I want to ask you if this is just the way business is. We cannot celebrate the arrest of another former president, he said. Corruption is structural and is embedded in the relationships between our institution. And I ask you, is this truly the norm for Latin America, Asia, Africa, or even the U.S.?

Mr. Camilleri? Excuse me.

Mr. CAMILLERI. Fourth time lucky, thank you, Congressman. Corruption certainly was structural in Brazil. I think that is what this case among others revealed. I think that has to do with different issues, some having to do with accountability and some having to do with the particular kind of coalition Presidential system that the Brazilians have, where essentially presidents are very weak and have to cobble together legislative majorities among a dozen or more parties and at first pork and later corruption became the currency with which they were able to govern.

And so there are some structural things that are particular to Brazil that will make it difficult for them to root out this problem and I think that is what the article you are referencing was—

Mr. YOHO. It is. I mean we can look at JBS. I got pulled into this to the largest meat producers in the world. They got slapped with a \$3.2 billion fine for paying hundreds of millions of dollars out in bribes.

In your statement you said the World Bank calls corruption public enemy No. 1 for the developing world. The United Nations observes that corruption represents an enormous obstacle to the realization of human rights and that unchecked it can undermine the functioning and legitimacy of institutions, the rule of law, and ultimately the State itself. And I see it as a cancer that just erodes society, it robs people of the wealth of a country that should be propelling society.

So, my question for the panel is, No. 1, can you point out any examples where U.S. support has led to progress in addressing anti-corruption in the region? And we will focus on Latin America. Ms. Salazar?

Ms. SALAZAR. OK. OK, two things. I want to start saying two things. First of all, when I, when we, or at least when I talk about corrupt institutions in Latin America, I mean in general it is true, but in particular we need to see each country and each particular-

ities. I mean, I do believe that there are countries where in spite the whole institution could be, you know, people not corrupted but attacked by corruption. There are like good people——

Mr. YOHO. Sure.

Ms. SALAZAR [continuing]. —champions, I mean good people working to fight against corruption, so I think we need to support or you need to support these groups. And this is something that we have seen, for example——

Mr. YOHO. Let me ask you this, how do you support those? Are you familiar with MCC, the Millennium Challenge Corporation?

Ms. SALAZAR. Yes. Yes.

Mr. YOHO. You know, they go in and they have a set of metrics that they measure a country.

Ms. SALAZAR. Yes.

Mr. YOHO. I propose that we do trade that way. We trade with countries, we set up a metric. Countries at the very top that fall in alignment with America, not us dictating to them, but if they fall up here, they get the best trade deals. Countries that are below get a little bit less trade deal. They can always aspire to get to the other level, and that is the only way I can see that we can do that.

But in doing that we have to make sure we are following the rules the way we are supposed to. I would love to go on, but I am out of time. Thank you for being here.

Mr. SIRE. Congressman Vargas.

Mr. VARGAS. Thank you very much, Mr. Chairman, and thank you for holding this hearing. And also, the ranking member, thank you. Especially, thanks to the people that are here with us today especially the presenters.

Mr. Camilleri, you said that it is hard to get people that are part of the system to reform that system. As you know, Andres Manuel Lopez Obrador, AMLO, in Mexico, was recently elected President. He ran on an anti-corruption platform. That was going to be and is what he is attempting to do.

And a number of us were able to go down to his inauguration and he basically said, you know, if we can stop corruption in this country, we can do all sorts of things for the country and quite aggressively propose the future for Mexico. What do you think of Mexico and what is going on there with the programs that he has instituted or he is attempting to institute and how do you think that is going to work out? Because he was not part, I would say he was not part of the people he was trying to get in, obviously, but he was not part of that system.

Mr. CAMILLERI. Thank you, Congressman.

I think you are right about that. AMLO is somebody who is viewed by the Mexican people as having a level of personal rectitude that is pretty unique in that political system. That gives him a real platform to take on this issue and I think it is right to say that the backlash against corruption was one of the things that most drove his successful election campaign.

I think what has been perhaps concerning is that it is not clear what the institutional kind of approach to combating corruption will be from his government. That is, having this momentum, having this platform, having the personal legitimacy that he brings to the issue, what is he going to do with that?

This is not going to be a case where the fact that the president is not a crook is enough to make, you know, every last cop in Mexico honest, right. You are going to have to do some things at a structural level starting with, for example, and DPLF has done a lot of work on this, bringing greater independence to the public prosecutor's office. And those sorts of things—

Mr. VARGAS. He has proposed a number of these measures. I think that you probably have seen them in his inauguration. I do not know if he is going to follow through, but he certainly did propose them.

Mr. CAMILLERI. Yes, I think we are waiting to see. I mean I have met with his minister who is sort of running this file. I think their diagnosis of the situation is accurate. I think they are well meaning, but they have been a little bit slow out of the gate, to be honest, in terms of actually putting in place a program to weed out corruption in the country. It is early, but we will have to wait and see.

Mr. VARGAS. Before my time runs out, I have to do ask this and I would be remiss if I did not. I am a former Jesuit. I was in the Jesuits for about 5 years. And Nicaragua, right now, has an incredible problem with the President there and some of the corruption, and in particular I fear for the life of Chepe Idiaquez. He is director of the Jesuit university there, UCA, because he is standing up to the corruption.

Can anyone comment about what is going on in Nicaragua, and again in particular this priest who I think has been very brave to stand up to the corruption that he sees.

Mr. Hall, would you like to handle that one if you can, and then we will go to Ms. Salazar. If you have information, go ahead.

Mr. HALL. I do not think I am the right person to answer that.

Mr. VARGAS. OK, Ms. Salazar?

Ms. SALAZAR. Yes. Well, the situation in Nicaragua is very complicated and somehow, you know, from my opinion, from my point of view, what we have seen last year in Nicaragua, I mean cities mobilizations and the people killed, detained, political detentions, and so on and so forth, are the result of a process of 20 years of co-optation of the government institutions.

From my perspective, from the work I do, I feel somehow guilty for not being able to say something before, because now all institutions are corrupted by the political power and it is going to take time to find, I mean to enter into a transition process. I think this is what this country needs, a transition process to go through accountability and institutional reforms.

Mr. VARGAS. Well, thank you. And again, I want to mention again the priest's name is Father Chepe Idiaquez. He has been threatened many times. The university has been harassed, has been attacked. I want to make sure that we keep him and the university in our mind when we speak about this issue. I hope he was not one of the people that has been killed, because a number of people have been killed. So again, I would mention his name, Chepe Idiaquez, the Society of Jesus, the rector of the UCA. Thank you.

Mr. SIRE. Thank you, Congressman.
Congressman Levin.

Mr. LEVIN. Thank you very much, Mr. Chairman.

Mr. Camilleri, when it comes to the U.S. role in fighting corruption both our actions and our words matter, yet, at times, the Trump administration has been inconsistent in speaking out about corruption in the Americas. The administration has been relatively quiet about the efforts by Guatemalan President Jimmy Morales to undermine the U.S. supported, U.N. supported International Commission against Impunity in Guatemala, or CICIG, particularly while it investigates corruption within Mr. Morales' own administration.

Last month, Foreign Policy reported, quote, that over the past 2 years, the Trump administration's political appointees have worked to undermine a highly regarded U.N. anti-corruption commission in Guatemala, one that has uncovered alleged illegal campaign contributions to Morales as well as allegations of corruption by his brother and son.

Foreign Policy also reported that following a March 2018 trip to Guatemala, then U.S. Ambassador to the United Nations, Nikki Haley, began pushing for the U.S. to end its financial support for CICIG. Yet months earlier, Haley argued in an op-ed, quote, corruption spurs revolutions, enables extremist groups, and fuels civil wars. Combating corruption is not just about good governance, it is about maintaining peace and security. What do you think accounts for this inconsistency from the Trump administration?

Mr. CAMILLERI. Congressman, I honestly do not know, but I am glad you raised it. CICIG, in my view, has been the most successful innovation in anti-corruption policy and law, certainly in the 15 years that I have been working on legal and policy issues in the hemisphere. It has also been—

Mr. LEVIN. Most important in the hemisphere or most important in Guatemala?

Mr. CAMILLERI. In the hemisphere, certainly in Guatemala.

Mr. LEVIN. And why, expand on that. What is so great about CICIG?

Mr. CAMILLERI. CICIG took an extremely fragile judicial system with almost absolute impunity for the powerful with high degrees of penetration and cooption, intimidation by organized crime, and turned it into a place where not only was that impunity broken, Guatemalan democracy quite literally was saved on a couple of occasions by CICIG. Presidents, vice presidents, ministers started going to jail. And I think, most importantly, the courageous Guatemalans who were always there, the Attorney Generals Claudia Paz, Thelma Aldana, were able to do their work.

I think what we discovered when you put CICIG in the country and you gave them sort of this blanket of protection was that Guatemalans are capable, they are courageous, they just need to be in an environment where everything they are doing is not being leaked to organized crime and their families aren't being intimidated and they are being forced into exile.

And so CICIG was a gamechanger. It was also something that had strong bipartisan support. It was created during the George W. Bush Administration.

Mr. LEVIN. Right.

Mr. CAMILLERI. Supported through the Obama Administration, supported at the beginning of the Trump administration. Secretary

Tillerson gave a speech in Austin in which he praised CICIG. So, it came as a, I would say not just a surprise, but sort of a devastating blow to those of us who work on this issue to see the Trump administration in some respects turn its back on CICIG.

Mr. LEVIN. And do you think President Morales has felt emboldened by the Trump administration's tepid response to his actions?

Mr. CAMILLERI. There is no question in my mind. I will say the Trump administration's broader policy in Guatemala in the last couple of months has seemed to find its footing again, so the administration's stance on the revival of an amnesty law for war-related crimes has been good and some of its statements on election-related issues have also been good.

The decision to, on the jeeps that were misused to intimidate CICIG and other Guatemalan organizations and institutions, again I think the administration is coming to a better place on some of those broader rule of law issues in Guatemala, but certainly on CICIG it was not just disappointing, but emboldening as you said for Jimmy Morales in his campaign to save his own skin by going after CICIG.

Mr. LEVIN. All right.

Well, I have just a little time left. Ms. Salazar, let me bring you in to this. Given this idea about the Guatemalans own capacity being freed here, what is your idea about how different countries have prosecuted or not prosecuted corruption cases? Is it differences in legal framework? Does the U.S. have a big role to play or the U.N. in helping empower countries?

Ms. SALAZAR. As I was saying before, I think that—I mean in general judicial institutions in Latin America are weak, but in particular if you analyze country by country there are good people working in good institutions. I mean it is possible to identify particular areas, divisions worth it to support. Maybe it sounds strange, but, for example, this is what happened in Peru. There is a huge corruption scandal, not necessarily the Odebrecht case but a similar one, and because of this case the general prosecutor had to resign. But there is still a group within the general prosecutor's office investigating the Odebrecht case and investigating it really good. I mean, really, they are doing a great job. So this is my first idea.

And the second idea is in terms of prosecution for the Odebrecht case there are differences in countries. I would say that countries that have done more have been Brazil and Peru and the countries that have done less are of course Venezuela and Mexico, unfortunately Mexico. Yes, they have done almost anything.

Mr. LEVIN. Thank you.

Sorry to go over, Mr. Chairman. I yield back.

Mr. SIRES. Congressman Gonzalez.

Mr. GONZALEZ. Thank you, Mr. Chairman, and thank you to the panel for being here with us today. I am going to continue asking a couple of questions that Congressman Espaillat and Congressman Levin talked about, which in particular is with, in Guatemala. And I am very interested in Guatemala because I think the idea of CICIG is a great idea, but there are some issues that concern me. But I think it is a great idea that we have a group that is in-

ternal in a country and is on the ground fighting corruption on a daily basis.

My concern is, what Department of Justice supervision do we have on CICIG, if at all? That could be to anyone on the panel who wants to take that question. Mr. Hall might know about that.

Mr. HALL. I do not know authoritatively. My understanding is that it is not a Department of Justice program so it is not supported directly in the way that other more bilateral programs might be.

Mr. GONZALEZ. That is my understanding as well. So how do we measure the accountability of CICIG? Does anybody know how much has been spent on that group in the last 10 years?

Mr. CAMILLERI. Congressman, that information is public but I do not have it in front of me.

Mr. GONZALEZ. Yes. Well, it is about \$168 million. That is a lot of money. And I see what the Department of Justice could do with a \$168 million just in a small, you know, in the southern district of Texas where I practice law, and they would have a lot of arrests and convictions. And I know they did a great job at the beginning with Otto Perez and that organization that was severely corrupt and I am sure we are far from where we need to be.

But my only concern is that I feel the Department of Justice should be more involved in overseeing what is happening in Guatemala and in particular with CICIG. At the end of the day I know, and by no means am I giving President Morales or the Government of Guatemala a pass on anything, but it is concerning that we have an international organization in that group with complete immunity, if I am correct. If I am not correct, please correct me, right—with complete immunity, with high investment both American and international, and it seems like we do not have milestones that we could measure that that investment is a good investment.

And I just could tell you, you know, just looking at what we do in the Department of Justice in one area with \$168 million, it seems that we would have a massive result from that. And I do not see—I did see some great results at the beginning, but it seemed to have kind of taken a huge dip. And I know that at the end of the day the President was, the President's brother and son had some issues. Can you tell me anything about that?

Ms. SALAZAR. I agree with you, Congressman Gonzalez, about the accountability thing. I really do think, I think all institutions need to be accountable for the work they do and the money they receive, either State money or private money. This is clear. I do not know the details about the accountability mechanisms of CICIG where, but I agree totally with you that they need to be accountable for the way they have spent their money. But on the other side, I have to address the great work that the CICIG has done.

Mr. GONZALEZ. Do you know—excuse me for interrupting. Do you know why, what are the issues that concern the President's brother and son that they got caught up in a corruption scandal in Guatemala? Does anybody here know the details of that?

Ms. SALAZAR. Well, they were of course they did not like what CICIG was doing because in one of the—

Mr. GONZALEZ. But do you know what they are being accused of?

Ms. SALAZAR. I do not remember. Illegal finance?

Mr. GONZALEZ. OK, that is political. That is the President.

Ms. SALAZAR. Yes.

Mr. GONZALEZ. I am talking about the son and the brother.

Ms. SALAZAR. I do not remember. I do not remember.

Mr. GONZALEZ. OK. I have done a little bit of research on this and it had to do with \$10,000 worth of gift baskets.

Ms. SALAZAR. Oh, OK. Yes.

Mr. GONZALEZ. Which is quite shocking. And I have no problem, you know, anybody who commits a crime should pay for it and deal with it, but I have huge issue. I know we barged into that Presidential palace with cameras and machine guns to arrest a kid who had been going to school here in the United States that came down to face the consequences, and I just think that CICIG when they did that, really, I think it hurt their credibility.

And I am not talking about Guatemala, because what other country—I thought that was a great model to take to other countries in Central America and Mexico and South America. But how are we ever going to get them to accept that program when they see that type of abuse in places like Guatemala?

Ms. SALAZAR. I accept that, you know, if this is the case, I will agree with you that maybe it was a mistake in the strategy to select the case. But I would not think that this decision, this maybe bad decision would, you know, nullify or would, you know, disappear all that important things that the CICIG has done.

Mr. GONZALEZ. I agree with that.

Ms. SALAZAR. Yes.

Mr. GONZALEZ. I agree with that. At the beginning I think they did a great job, but I do feel that something went off track at some point. And, you know, I think that maybe the U.N. should have gotten involved at that point and maybe changed the leadership or something to save the integrity of CICIG and to allow an organization like that to be acceptable to other essential American countries or Latin American countries. And I am particularly bothered that the Department of Justice plays a very little role in that group.

Ms. SALAZAR. If you allow me to say, if that happen I would agree with you that you need to do more oversight about CICIG's activity.

Mr. GONZALEZ. So who would do that?

Ms. SALAZAR. I would agree with that. But again, on the other hand, we need to preserve the institution. We need to preserve the initiative because, you know, if you see in other countries in the region, they are asking for a CICIG, because in many countries State institutions are corrupted by the political power and the criminal organizations.

Mr. GONZALEZ. I agree. But who would supervise CICIG?

OK, I yield back. You can answer that later.

Mr. SIREN. I gave you a minute and a half.

Congressman Phillips.

Mr. PHILLIPS. Thank you, Mr. Chairman and to our panel.

I would like to move to a little bit more macro level and discuss for a moment how we measure corruption, how we best measure corruption and how we provide incentives to combat corruption. So, turning to the former, I would welcome each of your thoughts on using the Corruption Perceptions Index as a real measure of cor-

ruption and if there are some alternatives that we should be considering.

Mr. CAMILLERI. Congressman, thank you. So, corruption is notoriously hard to measure which is probably why you are asking the question. Asking experts is the CPI, the Corruption Perception Index does is one method, another is to ask citizens themselves their experience, so, you know, have you paid a bribe in the last 6 months, in the last year. Those capture slightly different things. One is more about petty corruption, the other is about grand corruption.

I think the CPI is probably the best thing we have. I do not think it means that we can take a country that is 67th on the list and say it is doing better than a country that is 68th on the list. You know, it is more, you know, it helps us kind of spot general trends and place countries comparatively in broader terms. But certainly, you know, we do have a challenge in terms of accurately measuring corruption.

Mr. PHILLIPS. OK. Thank you.

Ms. Salazar.

Ms. SALAZAR. Yes, briefly. Yes, I agree with Michael, it is very difficult to measure corruption. For me as a lawyer, I am not a political scientist, but as a lawyer I think that, you know, if you find high level corruption cases with no prosecution or with high levels of impunity, well, for me in this country the problem of corruption is very high.

But I want to—two things. One is that, I mean why Odebrecht happened and these kinds of cases happened, the Odebrecht case I think it found a very particular context in the region because we went through during the last 20 years, 15 years in Latin America, we went through a crisis of political parties. Our traditional political parties lost trust from the public and this is why appear many new political parties, the small ones who need money. They needed money to do their campaigns and this is where Odebrecht appeared, so two needs found each other and I think it was a great context for Odebrecht to have a success.

And the second thing is that for me, the main sign that the anti-corruption movement or anti-corruption measures are having success is seeing that high level authorities are prosecuted and are imprisoned. This is the best example that you can have in any Latin American countries as a deterrent for corruption.

Mr. PHILLIPS. Thank you.

Mr. Hall.

Mr. HALL. I have already made it clear that I am an advocate for deterrence so that is why I agree with Ms. Salazar's comment. I also think that perception does matter. I mean, I analogize it to the organized crime in Philadelphia where I am from and the effect of organized, the pernicious effect of organized crime often was overlooked in press coverage of the mob.

What would get covered would be things exploding and people getting shot, you know, and exciting events like that. But where it really was felt was on the street, you know, if there was somebody, you know, causing a problem in the neighborhood, the neighbors would have to ask themselves, do I call the police or do I call the capo, you know, and when, you know, the mob infiltrates unions

that affects people's jobs and it affects, you know, who gets hired for what.

And then of course when American politicians are corrupted by the mob the same thing happens, and people, it is this exact phenomenon we are describing. People just lose confidence in the process and they do not believe that they are going to be treated fairly and so they have to make these decisions. It becomes a shadow government, in effect.

So the idea of asking people, you know, questions about how does this affect you on a concrete level, I agree, makes a lot of sense.

Mr. PHILLIPS. Thank you. And we have less than a minute left, but I would welcome any comments on incentivizing good governance and in the Millennium Challenge Corporation, whether or not any of you think those are worthy mechanisms to provide incentives to encourage good government. We have about 30 seconds.

Mr. CAMILLERI. Sure. Well, you know, thumbs up for MCC. Certainly, anything that creates a direct link between stronger rule of law, stronger programs to combat corruption, and stronger support from the United States, I think, is a good idea.

Mr. PHILLIPS. And effective?

Mr. CAMILLERI. Yes.

Mr. PHILLIPS. I like succinct answers.

All right, we are out of time. I yield back. Thank you.

Mr. SIREN. Thank you.

Congressman Castro.

Mr. CASTRO. Thank you.

I want to ask you all—and I apologize. I have been running around this morning so I just got in. But this corruption, how much of it is driven by poverty and socioeconomic circumstances versus by greed, for example, or graft or things like that?

Ms. SALAZAR. Well, in the case of petty corruption I think, you know, poverty and lack of opportunities are an important factor. But when we talk about grand corruption, big criminal organizations, you know, working as a network to take advantage of public wealth for their own gain, I do not think it is connected to poverty, it is connected with greed, and taking advantage of State wealth.

Mr. CASTRO. And also you all may have gone through this already, but what is—we have talked a lot, for example, about doing something in the Northern Triangle countries of Central America. A big part of that would be an anti-corruption assistance, right? What is the scale of the challenge as far as you all can tell? For example, are we talking about \$5 billion, are you talking about \$20 billion, \$30 billion? What is the scale of the challenge?

Mr. CAMILLERI. Congressman, obviously it is hard to put a number on it.

Mr. CASTRO. Sure.

Mr. CAMILLERI. The Central America package that was focused on the Northern Triangle that I was involved in piecing together was the one that the Obama Administration designed. It was a billion dollar per year package. I think Congress funded about three-quarters of that which is still a significant investment in the region. And so I think something on that kind of magnitude is probably about right.

There is obviously an issue of absorption capacity as well as the vast sort of needs on the ground. But I think just as important as kind of a scale is this issue of incentives that Congressman Phillips raised, which is, you know, how can we more nimble with that money? How can we put it in places where it is being used by responsible stewards?

We have seen, just taking the Northern Triangle countries for example, we have seen extraordinary attorney generals and we have seen corrupt attorney generals. Shouldn't our assistance be responding to the particular people in charge of the institutions on the ground that we are supporting in order to both get more bang for the U.S. taxpayers' buck but also incentivize proper behavior by our partners in the region?

Mr. CASTRO. Anybody else?

Ms. SALAZAR. Yes, just briefly. Again, for me, the best deterrent for corruption is putting high level authorities in prison. Really, I mean this is what I have seen in the region. This is the best example for others and the best deterrent.

Mr. CASTRO. All right, I yield back, Chairman.

Mr. SIRES. Well, I want to take this time to thank the witnesses Mr. Hall, Ms. Salazar, Mr. Camilleri, and all the members that were here today. And with that, the committee is now adjourned. Good job.

[Whereupon, at 11:17 a.m., the subcommittee was adjourned.]

APPENDIX

**SUBCOMMITTEE HEARING NOTICE
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515-6128**

Subcommittee on the Western Hemisphere, Civilian Security, and Trade

Albio Sires (D-NJ), Chairman

March 26, 2019

TO: MEMBERS OF THE COMMITTEE ON FOREIGN AFFAIRS

You are respectfully requested to attend an OPEN hearing of the Committee on Foreign Affairs, to be held by the Subcommittee on the Western Hemisphere, Civilian Security, and Trade in Room 2172 of the Rayburn House Office Building (and available live on the Committee website at <https://foreignaffairs.house.gov/>):

DATE: Tuesday, March 26, 2019

TIME: 10:00 am

SUBJECT: Understanding Odebrecht: Lessons for Combating Corruption in the Americas

WITNESS: Mr. Michael Camilleri
Director
Peter D. Bell Rule of Law Program
Inter-American Dialogue

Ms. Katya Salazar
Executive Director
Due Process of Law Foundation

Mr. David L. Hall
Partner
Wiggin and Dana LLP

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee.

COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF SUBCOMMITTEE ON WESTERN HEMISPHERE, CIVILIAN SECURITY, AND TRADE HEARING

Day Tuesday Date March 26, 2019 Room 2172

Starting Time 10:02 am Ending Time 11:17 am

Recesses 0 (to) (to) (to) (to) (to) (to)

Presiding Member(s)
Chairman Albio Sires

Check all of the following that apply:

Open Session ☒
Executive (closed) Session ☐
Televised ☒

Electronically Recorded (taped) ☒
Stenographic Record ☒

TITLE OF HEARING:

Understanding Odebrecht: Lessons on Combating Corruption in the Americas

SUBCOMMITTEE MEMBERS PRESENT:

See attendance sheet.

NON-SUBCOMMITTEE MEMBERS PRESENT: (Mark with an * if they are not members of full committee.)

None

HEARING WITNESSES: Same as meeting notice attached? Yes ☒ No ☐

(If "no", please list below and include title, agency, department, or organization.)

STATEMENTS FOR THE RECORD: (List any statements submitted for the record.)

QFR Sires
QFR Rooney

TIME SCHEDULED TO RECONVENE _____

or

TIME ADJOURNED 11:17 am


Subcommittee Staff Associate

HOUSE COMMITTEE ON FOREIGN AFFAIRS
WHEM SUBCOMMITTEE HEARING

<i>PRESENT</i>	<i>MEMBER</i>
X	Albio Sires, NJ
	Gregory W. Meeks, NY
X	Joaquin Castro, TX
X	Adriano Espaillat, NY
X	Dean Phillips, MN
X	Andy Levin, MI
X	Vicente González, TX
X	Juan Vargas, CA

<i>PRESENT</i>	<i>MEMBER</i>
X	Francis Rooney, FL
	Christopher Smith, NJ
X	Ted Yoho, FL
	John Curtis, UT
	Ken Buck, CO
	Michael Guest, MS

RESPONSES TO QUESTIONS SUBMITTED FOR THE RECORD

Questions for the Record Submitted by Rep. Albio Sires
HFAC WHEM Hearing: Odebrecht
March 26, 2019

Michael Camilleri:

1. Can you explain the role of CICIG in investigating Odebrecht in Guatemala, including the effectiveness of those investigations and the challenges CICIG has faced in conducting its work?

It its plea agreement with the U.S. Department of Justice, Odebrecht admitted to making approximately \$18 million in corrupt payments to corrupt officials in Guatemala. Based on this revelation, CICIG worked closely with Guatemala's public prosecutor's office (Ministerio Público) to investigate the illicit payments. Their investigation demonstrated that Odebrecht directed \$4.9 million in bribes to then-Communications Minister Alejandro Sinibali and \$1.36 million in payments to a then-leading presidential candidate, Manuel Baldizón. The bribes to Sinibaldi represented a percentage of the value of public construction contracts awarded to Odebrecht, with corrupt payments channeled by the company's Division of Structured Operations to the offshore accounts of Sinibaldi associates via a bank in Antigua and Barbuda.

The Odebrecht investigation in Guatemala is a prime example of the sophisticated, independent prosecutorial work and resulting accountability for grand corruption made possible by CICIG's partnership with the Ministerio Público. To build its case, the two entities obtained relevant evidence from Brazilian prosecutors, developed their own lines of investigation, tracked complex financial movements, and employed plea bargain agreements to build their case—including a cooperation agreement with Odebrecht itself that included \$17.9 million in reparations to the Guatemalan state. On January 20, 2018, eleven raids were executed with two suspects captured. Just ten months later, in October 2018, the first conviction was achieved in the case. Sinibaldi remains at large, while Baldizón was detained by U.S. officials in early 2018 pending his return to Guatemala to face charges.

Unfortunately, CICIG's effectiveness has been curtailed significantly by Guatemalan President Jimmy Morales, who has announced he will not renew CICIG's mandate when it expires in September and has refused to allow CICIG chief Iván Velásquez to return to Guatemala. Morales' government has also taken steps to undermine the Ministerio Público's anticorruption prosecutors, who work closely with CICIG to investigate high-impact cases.

2. According to the Department of Justice, in some cases Odebrecht used the U.S. banking system to pass funds internationally through shell companies. These funds were then used to bribe officials in countries throughout the region. What steps can the U.S. government take to crack down on the movement of anonymous funds within our banking system? Which of these steps would require Congressional action and which could be achieved under existing law?

As documented by the Department of Justice, in multiple cases shell companies and offshore accounts were used by Odebrecht to channel funds from U.S. bank accounts to corrupt foreign officials. For example, Odebrecht's Division of Structured Operations set up a shell company called Golac in the British Virgin Islands. Funds were transferred by Odebrecht from New York-based accounts to an offshore account opened by Golac, with these funds then used to make bribe payments.

The use of anonymous shell companies in the Odebrecht case, including to facilitate and disguise the movement of funds through the U.S. banking system, underscores the need for beneficial ownership transparency. Beneficial ownership registries would impede money laundering and the flow of illicit financial flows by informing the public and enforcement agencies of the actual beneficiaries of transactions carried out by legal entities.

Anonymous companies were used in 70 percent of grand corruption cases reviewed by the World Bank, yet Transparency International notes that the United States has no federal law generally requiring legal entities to maintain beneficial ownership information. Ongoing bipartisan efforts to close this loophole should be prioritized. Doing so will not only make it more difficult for dirty money to be laundered through the U.S. financial system, but also put our negotiators in a stronger position to press other countries to do the same.

Katya Salazar:

1. In looking at the many countries affected by Odebrecht, there are clearly differences in terms of the effectiveness of their legal systems and capacity to prosecute grand corruption cases. Are there specific legal tools that are particularly valuable for investigating a massive corruption scheme like that carried out by Odebrecht and which the U.S. and other international partners should press governments in the region to adopt?

One of the most important tools to investigate a massive and sophisticated corruption scheme is the ability of prosecutors to offer sentence reductions in exchange for information relevant to the investigation. Similar to the “plea agreement” in the United States, the so-called “*colaboración eficaz*” or “*delación premiada*” in Latin America have been key to obtaining critical evidence for Odebrecht-related cases in Brazil and Peru. These tools need to be used more frequently for further progress to be made in corruption prosecutions. They also must be better regulated in order to avoid potential violations of due process or other fundamental rights that could later challenge or impugn the process.

David Hall:

1. According to the Department of Justice, in some cases Odebrecht used the U.S. banking system to pass funds internationally through shell companies. These funds were then used to bribe officials in countries throughout the region. What steps can the U.S. government take to crack down on the movement of anonymous funds within our banking system? Which of these steps would require Congressional action and which could be achieved under existing law?

Response

Odebrecht's Division of Structured Operations exerted significant effort to obscure and conceal the source and destination of the bribes it paid. As set forth in the charging information: "Many of the transactions were layered through multiple levels of offshore entities and bank accounts throughout the world, often transferring the illicit funds through up to four levels of offshore bank accounts before reaching the final recipient. In this regard, members of the conspiracy sought to distance the origin of the funds from the final beneficiaries." Odebrecht Information at ¶ 28. The recipients of these bribes concealed their identities by using their own offshore anonymous accounts. *Id.* ¶ 31. As a result, it is unlikely a U.S. bank could have, without specific cueing information, unwound these transfers and tied them to the payment of bribes to foreign officials.¹

The effectiveness of anti-money laundering regulations and policies depends on the availability of information about the source, destination, and nature of financial transactions. In this case, the information necessary to identify these transactions as bribes was located outside of the U.S. and was discovered by foreign law enforcement agencies. Indeed, it was through cooperation with foreign law enforcement that U.S. authorities were able to identify the string of transactions culminating in the payment of bribes to foreign officials. One way the U.S. government can discourage the use of the U.S. banking system to pay bribes to foreign officials is by strengthening collaborative relationships between U.S. and foreign law enforcement and regulatory authorities by, for example, expanding law enforcement attache programs. The U.S. government can thereby increase the information available to U.S. law enforcement, regulators, and banking institutions alike, enabling both more effectively enforcement and also more effective anti-money laundering programs.

¹ I was not involved in the investigation into these transactions, and it is possible that the agencies that conducted this investigation possess additional information about the nature of these transactions. However, it does not appear, from the information publicly available, that the U.S. banking institutions involved in these transactions were aware that they were part of an illegal scheme to pay bribes to foreign officials.

Questions for the Record Submitted to Ms. Katya Salazar
Rep. Francis Rooney
HFAC WHEM Hearing: Odebrecht
March 26, 2019

1. What is the most effective way to encourage governments in Latin America to prosecute individuals who participated in the Odebrecht corruption scandal?

Strengthening the independence and efficiency of the Attorney Generals' offices in Latin America is key to facilitating Odebrecht-related prosecutions. In addition to technical assistance, the US government can support the integrity of prosecutors' offices by supporting merit-based, less politicized selection processes for Attorneys General. It should also urge foreign governments that those involved in investigating or prosecuting corruption cases receive needed protection. The US government can do so through in part through diplomatic efforts, i.e., making this issue a priority for US Ambassadors, the presence of US diplomats at public hearings and trial proceedings, etc.

2. How can the U.S. government help to encourage transparency in countries where Odebrecht did not disclose the full extent of its corrupt practices to protect its business and political associates?

A review of corporate accountability laws and potential reforms is warranted in those countries. Additionally, supporting investigative journalism is key for encouraging transparency. The US government should support investigative journalism outlets through technical assistance and exchanges with US journalists. This goes hand in hand with full diplomatic support for freedom of expression and freedom of access to information.

3. In your opinion, what should happen to those individuals who participated in Odebrecht's corruption acts in countries Odebrecht did not disclose their participation, in violation of its plea agreement with the United States Department of Justice?

Those individuals should be investigated and prosecuted in the relevant Latin American countries (or in the US if there is sufficient nexus). Offering a plea agreement (in Latin America, through "colaboracion eficaz" or similar laws) is crucial to enable prosecutors to gather sufficient information to begin to untangle the web of Odebrecht-related corruption. The prosecution of ringleaders and high-level officials should be prioritized over those who engaged in smaller-scale acts of corruption.