



HARVARD Kennedy School

CARR CENTER

for Human Rights Policy

Corruption and Human Rights: The Linkages, the Challenges and Paths for Progress



SYMPOSIUM REPORT

APRIL 25, 2018

A NOTE FROM THE CARR CENTER

The mission of the Carr Center for Human Rights Policy is to realize global justice through theory, policy, and practice. To this end, we conduct research and teach students who will be the next generation of human rights practitioners and policymakers. We also host convenings at the Harvard Kennedy School that bring together academics and practitioners to address contemporary issues related to human rights and foster a more strategic, cross-disciplinary, and outcome-oriented human rights practice.

Over the past year, we at the Carr Center have started to think more deeply about the connections between corruption and human rights and how we can contribute to advancing policy and practice at the intersection of these issues. Corruption has implications for all four of the pillars of the Center's work: human security, global governance, economic justice, and equality and discrimination.

This symposium was conceived as a way for us to convene leaders and academics from the human rights and anti-corruption movements, which have traditionally operated as separate communities of practice, to explore the linkages between the issues we work on and consider approaches to advance our work together. We hope that this symposium will not only help to inform and shape a deeper involvement of the Carr Center into the issue of corruption, but will also be the start of an ongoing collaboration between the human rights and anti-corruption communities.

Mathias Risse, Acting Faculty Director
Sushma Raman, Executive Director

INTRODUCTION

The Carr Center for Human Rights Policy at the Harvard Kennedy hosted a symposium on April 25, 2018 with the goals of bringing together human rights and corruption scholars and practitioners to better understand the connection between corruption and human rights violations, and creating and growing an initiative on human rights and corruption housed at the Carr Center that is global, cross-disciplinary and cross-sectoral in nature.

The symposium was attended by over 70 participants from diverse backgrounds, including academia, law, business, and multilateral institutions, as well as from multiple disciplines, including political science, law, international relations, and behavioral economics. Discussion centered on defining and elaborating the links between corruption and human rights, and exploring solutions to facilitate greater collaboration between anti-corruption and human rights communities of practice and address corruption and violations of human rights.

Organizers and facilitators of the symposium include: Dr. Mathias Risse, Acting Faculty Director at the Carr Center; Dr. Kathryn Sikkink, Ryan Family Professor of Human Rights Policy at Harvard Kennedy School; Hon. Mark Wolf, Senior Fellow at the Carr Center and Adjunct Lecturer at Harvard Kennedy School; Alberto Mora, Senior Fellow at the Carr Center; and Sushma Raman, Executive Director of the Carr Center.

CONFERENCE SCHEDULE

HARVARD KENNEDY SCHOOL
79 JFK STREET, CAMBRIDGE, MA 02138
APRIL 25, 2018

MALKIN PENTHOUSE (LITTAUER-P-9)
HARVARD KENNEDY SCHOOL

GOALS

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- **TO BRING TOGETHER HUMAN RIGHTS AND CORRUPTION SCHOLARS AND PRACTITIONERS TO BETTER UNDERSTAND THE CONNECTION BETWEEN CORRUPTION AND HUMAN RIGHTS VIOLATIONS**
 - **TO CREATE AND GROW AN INITIATIVE THAT IS GLOBAL, CROSS-DISCIPLINARY, AND CROSS-SECTORAL AND IS HOUSED AT THE CARR CENTER**
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AGENDA

8:30 AM REGISTRATION AND BREAKFAST

9:00 AM WELCOMING REMARKS

- Mathias Risse, Acting Faculty Director, Carr Center for Human Rights Policy
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9:15 AM FRAMING REMARKS: CORRUPTION AND HUMAN RIGHTS

Judge Mark Wolf

- Senior Fellow, Carr Center for Human Rights Policy
 - Senior Judge, U.S. District Court for the District of Massachusetts
-

9:45 AM

CORRUPTION AND HUMAN RIGHTS: CROSS-DISCIPLINARY PERSPECTIVES

Facilitator

- Kathryn Sikkink, Ryan Family Professor of Human Rights Policy, Harvard Kennedy School

Speakers

- Ray Fisman, Slater Family Professor in Behavioral Economics, Boston University
- Luis Moreno-Ocampo, Senior Fellow, Carr Center for Human Rights Policy
- Pascale Dubois, Integrity Vice President, The World Bank

- Zoe Reiter, Senior Project Leader, Transparency International
 - Bo Rothstein, August Röhss Chair in Political Science at University of Gothenburg, Sweden
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11:30 AM LUNCH

12:00 PM LUNCHEON SPEAKERS

HOW CORRUPTION EXACERBATES RIGHTS VIOLATIONS: PERSPECTIVES FROM THE FIELD

Facilitator:

- Sushma Raman, Executive Director, Carr Center for Human Rights Policy

Speakers:

- Corinna Gilfillan, Head, US Office, Global Witness
 - Siddharth Kara, Senior Fellow, Carr Center for Human Rights Policy
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1:00 PM BREAK

1:15 PM WHAT SHOULD BE DONE? ADDRESSING CORRUPTION AND VIOLATIONS OF HUMAN RIGHTS

Facilitator:

- Alberto Mora, Senior Fellow, Carr Center for Human Rights Policy

Speakers:

- Steven Livingston, Senior Fellow, Carr Center for Human Rights Policy
 - Sunita Saligram, former Lead Director, PwC's International Anti-Corruption and Program Integrity Practice and current MC/MPA student
 - Matthew Stephenson, Professor of Law, Harvard Law School
 - Alex Whiting, Professor of Practice, Harvard Law School
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2:45 PM CLOSING REMARKS

- Sushma Raman, Executive Director, Carr Center for Human Rights Policy
 - Kathryn Sikkink, Ryan Family Professor of Human Rights Policy, Harvard Kennedy School
 - Mark Wolf, Senior Fellow, Carr Center for Human Rights Policy and Senior Judge, U.S. District Court for the District of Massachusetts
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3:00 PM RECEPTION

3:30 PM CONCLUSION

INTRODUCTION AND FRAMING REMARKS

Mathias Risse, Acting Faculty Director and Professor of Philosophy and Public Policy welcomed participants to the symposium and provided framing remarks on the definition of corruption and conceptual connections between human rights and corruption. The notion of corruption and related topics has been around for a very long time. Risse described three main conceptions of corruption.

A broad notion of corruption is as a “disease” or something wrong with the body politic as a whole, which is weakened through moral decay among citizens or rulers. This presupposes a notion of the public good that seems increasingly hard to come by in the last two centuries.

There is also a narrower definition of corruption as a subversion of the integrity of public office, encompassing phenomena of bribery, patronage, fraud, and extortion, which is what many people may think of when they think of corruption.

Risse introduced a definition provided by Lawrence Lessig, of Harvard’s Edmund J. Safra Center for Ethics, which is designed to chart a middle course between these broad and narrow notions. The Safra Center focuses on addressing “institutional corruption,” which Lessig defines as follows:

"INSTITUTIONAL CORRUPTION IS MANIFEST WHEN THERE IS A SYSTEMIC AND STRATEGIC INFLUENCE WHICH IS LEGAL, OR EVEN CURRENTLY ETHICAL, THAT UNDERMINES THE INSTITUTION’S EFFECTIVENESS BY DIVERTING IT FROM ITS PURPOSE OR WEAKENING ITS ABILITY TO ACHIEVE ITS PURPOSE, INCLUDING, TO THE EXTENT RELEVANT TO ITS PURPOSE, WEAKENING EITHER THE PUBLIC’S TRUST IN THAT INSTITUTION OR THE INSTITUTION’S INHERENT TRUSTWORTHINESS." - [FROM "INSTITUTIONAL CORRUPTION, DEFINED"](#) BY LAWRENCE LESSIG.

The notion of institutional corruption encompasses a number of phenomena, including money in politics, connections between medical schools and pharmaceuticals, and similar phenomena.

After outlining these three main conceptions of corruption--corruption as moral decay of the body politic, subversion of political office, or institutional corruption--Risse turned to the different ways of thinking of the connections between human rights and corruption.

At the Carr Center, he said that some argue that there should be a human right to a corruption-free government. Others argue that corruption is an independent phenomenon that bears on human rights. The conceptual challenge in relating human rights and corruption is that the human rights perspective is one of individual entitlement, whereas notions of corruption come from the perspective of things going wrong in the body politic as a whole, within certain institutions, or on the part of public officials. While acknowledging the challenges of precisely defining the connection between human rights and corruption, Risse argued that at the end of the day the goal to pursue greater conceptual clarity is still important.

Following Risse's remarks, Judge Mark Wolf provided opening framing remarks on corruption and human rights. He described his career in combating corruption as a judge, which led him to see that grand corruption and the most serious abuses of human rights are two sides of the same coin. However, the anti-corruption movement and international human rights movement tend to operate in separate silos. Some in the international human rights movement fear that focusing more on corruption will draw attention or resources away from addressing crimes against humanity, for example. Wolf pointed out that the anti-corruption and human rights communities of practice share a focus on corrupt leaders, and called for greater collaboration between them. He noted Anne Applebaum's writings on the complementarity between the two movements, which both rely on arguments around justice and the rule of law, and appeal to the human instinct for fairness.

Wolf argued that anti-corruption advocates can learn from the human rights community and combat impunity and strengthen accountability through looking at the model of the International Criminal Court (ICC). He advocated for the creation of an International Anti-Corruption Court, modeled on the ICC, which is needed to diminish the devastating costs of grand corruption. Research shows that 5% of GDP is lost to corruption and ten times that is lost in developing countries. Former UN High Commissioner for Human Rights Navi Pillay said in 2013 that "corruption kills." Kleptocrats enrich themselves at the expense of their citizens' well-being, diverting resources from social programs and critical needs such as poverty reduction, education and healthcare.

“CORRUPTION IS AN ENORMOUS OBSTACLE TO THE REALIZATION OF ALL HUMAN RIGHTS, IN PRACTICAL TERMS – CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL, AS WELL AS THE RIGHT TO DEVELOPMENT,” THE HIGH COMMISSIONER FOR HUMAN RIGHTS, NAVI PILLAY, TOLD THE UN HUMAN RIGHTS COUNCIL.

In just one example, one third of the money sent to fight Ebola in Sierra Leone in 2014 could not be accounted for. The money stolen through corruption each year is enough to feed the world 80 times over. Grand corruption has security implications as well. The people behind Boko Haram and Taliban are primary opponents of the kleptocrats, and indignation against grand corruption is destabilizing countries around the world. Protests in Egypt’s Tahrir Square and the Maidan in Ukraine were led by young people opposing their corrupt leaders. Countries with the worst corruption also have the worst human rights records; Somalia, Afghanistan, South Sudan, Yemen, Iraq and Syria are prominent examples. Corrupt leaders pursue the people who seek to expose them--including journalists and anti-corruption activists--suppressing free speech.

A credible threat of prosecution could be an effective way to control grand corruption through a deterrent effect. When President dos Santos in Angola stepped down from office in 2017, he provided lifelong immunity from prosecution to his friends, family, and himself. World leaders--including Mary Robinson, Navi Pillay, David Cameron, and John Kerry--are increasingly concerned with the need to address corruption and human rights together through greater accountability under the law and synergy between efforts of UN bodies like the UN Conference on Trade and Development (UNCTAD) and international human rights conventions.

Kleptocrats who violate human rights are often called “bad actors.” In Wolf’s view, this term is “utterly inappropriate.” He argued that we need to “get the rhetoric right, and call criminals criminals.” This helps to make at least part of the solution clear: we need to prosecute corrupt officials. Impunity for grand corruption is not due to a lack of anti-corruption laws, because a majority of countries do have laws against bribery or misappropriation of natural resources, but due to the fact that in practice these laws are not enforced against the elite.

Wolf argued that there is risk that the United Nations Convention Against Corruption (UNCAC) may do more harm than good because it focuses more on whether anti-corruption laws are put in place in accordance with international standards, rather than

whether those standards are enforced. For example, UNCAC treats Russia as an honored member for having all of the necessary laws to comply with the convention, despite the fact that grand corruption is a reality in Russia and anti-corruption advocates are persecuted and even killed, as in the case of Sergei Magnitsky. Wolf and his colleagues at Integrity Initiatives International, who are leading a movement advocating for the establishment of an International Anti-Corruption Court, believe that such a court would help give UNCAC “teeth” and would be a way to combat both grand corruption and abuses of human rights.

PANEL DISCUSSION: CORRUPTION AND HUMAN RIGHTS: CROSS-DISCIPLINARY PERSPECTIVES

Kathryn Sikkink moderated a panel on corruption and human rights focused on cross-disciplinary perspectives. The discussion focused on the lack of conceptual clarity around the linkages between corruption and human rights, and the need to bridge silos between the anti-corruption and human rights communities. Sikkink encouraged panelists and the audience to help build those connections throughout the day and mentioned that the discussion would help the Carr Center think about its own work on corruption and human rights.

Dr. Bo Rothstein, August Röhss Chair in Political Science at the University of Gothenburg in Sweden and author of several books on corruption, began the discussion by speaking about the work of the University’s Quality of Governance (QoG) Institute, of which he is a co-founder and Senior Advisor. Research by the QoG Institute on perceptions of corruption found that a majority of people in hopelessly corrupt settings take a moral standing against corruption. He argues this is because every society has some conception of public goods, and every society objects when people who are responsible for providing those public goods turn them into private goods. People may take part in corruption because they feel they do not have the choice, but they still think it is morally wrong. Rothstein argues that there is a universal understanding of corruption, noting this is a controversial notion and contested.

Rothstein objected to the often used definition of corruption as “abuse of public power for private gain.” He explained that the QoG Institute approaches the definition by defining the opposite of corruption: quality of government, and specifically impartiality

in the exercise of public policy. This is a clearer definition that can be operationalized and measured. It also connects directly to theories of justice by scholars such as Rawls and Dworkin; what people perceive to be the opposite of justice is not equal treatment but favoritism. This highlights a challenge for tackling corruption: partisanship is key to politics, and impartiality does not have a natural constituency. Looking forward, Rothstein noted that we are seeing increased popular mobilization for clean government, echoing Wolf's opening remarks. Today, people talk about democracy and human rights together; perhaps in 20 years, they will talk about democracy, human rights, and freedom from corruption.

Zoe Reiter, Senior Project Leader and Interim Representative to the U.S. at Transparency International, spoke about the role of Transparency International (TI) in tackling corruption both domestically in the United States and internationally and the evolution of TI's work over the past 25 years. TI's structure--over 100 national chapters, which are independent NGOs, in countries around the world--enables it to be responsive and relevant in the shifting space of anti-corruption nationally and internationally. TI was established at a time when corruption was seen as the cost of doing business. Its founders, development practitioners from the World Bank, believed that having an anti-corruption lens as part of their approach was essential to maximize human rights outcomes. TI defines corruption as "abuse of trusted power for private gain", what Reiter referred to as a "big-tent" definition that allows them to push forward from different angles on issues of abuse of state power, including state capture, bribery, favoritism, organized crime, etc. Today, TI targets its efforts toward communities that are most vulnerable to corruption, focusing on poverty and inequality, protecting whistleblowers and victims and witnesses of corruption. It works to promote accountability in diverse sectors including mining, pharmaceuticals, infrastructure, criminal justice, and delivery of basic services, pushing for participation and oversight by affected communities. Tackling financial secrecy--including issues such as anonymous ownership of shell companies and Western entities that facilitate money laundering--is a newer focus.

Reiter also spoke about some of the challenges to TI's work. These include the questionable reaction of the private sector to the growing phenomenon of nativist populism, and the fact that in this context using evidence-based advocacy to speak truth to power is no longer sufficient. Reiter argued that we need to come up with new narratives that engage people across sectors on our issues, and also to address the problem of the segregation of the human rights and anti-corruption fields, which she noted was partly due to donors. In the United States, this segregation of fields is illustrated in the way that the democracy movement – which has an emphasis on

addressing issues of money in politics – and civil rights movements are not integrated. Reiter also noted her concern that, because human rights discourse has less traction on the Hill these days, it is necessary to focus more narrowly on the national security implications of anti-corruption efforts to get the support of politicians.

Dr. Ray Fisman, Slater Family Professor in Behavioral Economics at Boston University, spoke about economic research on the disproportionate impacts of corruption on the rich and the poor. Like Rothstein, he sees corruption as a universal phenomenon. He is concerned with the way corruption creates a disproportionate “voice” for the rich as a result of income disparity. Using an economic lens, we can see corruption as an “excess tax” on the poor, or alternatively as a violation of the rights of the already disadvantaged. He provided an example of a study by Mexican economist Paul Lagunes on bribe extraction as a tax on the poor, which found that drivers who made an illegal left turn in view of the police were stopped by the police and issued a ticket half as frequently when they were driving luxury cars compared with drivers of beat-up non-luxury cars, who were stopped and asked for a bribe. Fisman described other instances in which corruption is more directly a violation of rights, such as in the case of workplace safety. Corruption causes violations of workers’ rights to adequate working conditions; a prominent example is the case of the Rana Plaza garment factory collapse in Bangladesh, in which the building owner was able to get away with building code violations due to his political connections.

Fisman described his own research with Yongxiang Wang on workplace safety and corruption in China, which found that worker death rates are far higher at politically-connected companies than at unconnected companies, particularly in coal mining, chemicals, metals smelting, and construction. Politically-connected and unconnected companies had the same rates of safety audits after a death occurred, but Fisman and Wang found that there were no major random safety audits conducted on companies with political connections in the absence of a death. After having documented this problem, they hope it will be the first step in the conversation about what can be done about this issue.

Pascale Dubois, Integrity Vice President at the World Bank, spoke about the connections between human rights and poverty. Poor people suffer more as a result of corruption and lack of human rights. The Integrity unit at the World Bank investigates allegations of corruption in projects financed by the World Bank, which are instances in which funds intended to help the poor are diverted from that purpose. Dubois provided

examples of health, electricity, water, and education projects the World Bank financed where there were instances of corruption; for example, an education project that was supposed to provide books for school children that never arrived. The Integrity unit's adjudication mechanism has debarred over 800 private companies, who are no longer able to get contracts financed by the World Bank or other international development banks until they put in place an adequate compliance program. Dubois described how this has had a multiplier effect: formerly debarred companies that establish stronger compliance mechanisms want their competition to be held to the same standards, and have asked the World Bank to come and train the private sector in their countries to behave cleanly. Governments have also begun to engage more actively with the World Bank out of a concern for the economic impact of companies being unable to do business with development banks. China has asked the World Bank to train its state-owned enterprises on establishing compliance mechanisms, which will have impact on the business they conduct in Central Asia, Africa, and Latin America. It is no longer the U.S. alone that is promoting the concept of "clean business," and if more countries like China start to promote anti-corruption there could be a significant influence. Another incentive for countries to pursue anti-corruption measures is attracting foreign direct investment, as private companies are more likely to invest in developing countries that are perceived to be clean. This is increasingly important for development as there is not enough money to raise standards of living coming from multilateral development banks.

Luis Moreno Ocampo, founding Prosecutor of the International Criminal Court and Senior Fellow at the Carr Center, considered how the Carr Center could produce interdisciplinary and multicultural analysis of the relation between corruption and human rights. Drawing on his extensive experience working on human rights and anti-corruption issues, he suggested we learn from the information revealed by judicial cases. He also agreed with the other panelists on the need to move beyond silos and to work across practices, sectors and cultures--including working with the private sector and government. Although corruption is everywhere--40% of cases involve top management of companies, and 7% involve the CEO of a company--the data is not easy to get. Studying judicial cases to understand what happened there can help move from particularities to universals. Ocampo discussed the Largo Agrio case, brought against Chevron by indigenous communities in Ecuador seeking justice for environmental and health damages caused by the oil company, which exposed the conflict between indigenous rights, environmental rights, reporters' privilege, first amendment rights, and fair trial rights.

Largo Agrio is an example of an interdisciplinary approach to anti-corruption being taken in the context of a judicial case. The indigenous communities attempted to

circumvent the corrupt judicial system in Ecuador and seek justice in a court in New York, but the New York judge refused to take the case. They then launched an international campaign.

Kathryn Sikkink posed several questions to the panelists, beginning by asking them to respond to the contested issue of the definition of corruption.

Bo Rothstein defended the QoC's definition of corruption, arguing that it was important to have a definition that could be operationalized so that it would be useful in our work to study and fight human rights violations. If a definition of corruption encompasses everything, then it is nothing. He argued against Transparency International's definition of corruption as abuse of power for private gain on the grounds that not all abuses of power amount to corruption – for example, if a public official steals a laptop, this is theft, not corruption. In Rothstein's view, the conception of institutional corruption is too close to traditional Marxism, while the definition of corruption as lack of trust in institutions is problematic because trust is relative and not easily operationalized for empirical research.

Luis Moreno Ocampo liked TI's definition of corruption for the very reason that it is very open, and can be used to describe different phenomena. Zoe Reiter explained that there are practical ways that TI integrates anti-corruption lenses into their work--talking to different audiences by emphasizing different aspects, such as national security or public accountability, and tackling non-traditional issues like corporate capture and money in politics--that would be lost by limiting the definition of corruption.

Pascale Dubois noted that because the World Bank Integrity unit works internationally and uses legal mechanisms, the definition of corruption that they use needs to be evidence-based and "approvable." However, she personally uses a working definition of corruption as "monopoly plus discretion, minus accountability."

Ray Fisman suggested that if we were to evaluate whether a particular act was an instance of corruption, we would generally see that many of these definitions would agree. However, he noted, there are many causes of underprovision of public services that are not corruption.

Sikkink then prompted the panel to consider the underlying causes of corruption. The argument that corruption is a violation of human rights is a normative argument, but

there are diverse causal arguments as well. Sikkink outlined four of these arguments:

CORRUPTION LEADS TO HUMAN RIGHTS VIOLATIONS

THE CONTEXT OF HUMAN RIGHTS VIOLATIONS FACILITATES CORRUPTION

THERE IS A CIRCULAR RELATIONSHIP BETWEEN CORRUPTION AND HUMAN RIGHT (VICIOUS AND VIRTUOUS CIRCLES)

IMPUNITY LEADS TO BOTH CORRUPTION AND HUMAN RIGHTS VIOLATIONS (I.E. IMPUNITY IS A THIRD CONFOUNDING VARIABLE)

There is research that suggests impunity contributes to human rights violations, and that countries that hold state officials criminally accountable for human rights violations tend to have lower human rights violations. However, there does not seem to be equivalent evidence for the effects of anti-corruption prosecution; more research is needed to establish whether prosecutions will deter or reduce corruption. Rothstein and Reiter provided examples--of Denmark and Sweden, which are now held up as exemplars of integrity but had higher levels of corruption prior to the early 19th century when it became possible to prosecute corrupt officials in court, and of Guatemala, where impunity for gang-related murders and organized crime has decreased since the establishment of an independent prosecutorial function overseen by the UN--that suggested prosecution could have an impact on reducing corruption. Ocampo offered that the cases in which the World Bank has debarred companies for corruption could provide case studies for the kind of empirical research Sikkink mentioned.

The panel took a number of questions and comments from the audience. Several audience members added to the discussion about the definitional issues; one asked about the implications of having a procedural rather than a substantive definition of corruption, and another voiced concern that defining corruption as the impartial use of power does not differentiate between different forms of corruption (i.e. petty corruption, grand corruption, and institutional corruption). On the subject of how to improve research on corruption, panelists noted that it was important to look at the counterfactuals and also to shed light on where anti-corruption efforts were working, to be able to show the private sector and governments what is in it for them to pursue anti-corruption. In response to a question about the role of ethics in anti-corruption work, the panelists agreed that ethics are an important part of work to counter corruption and should be taught in schools. Dubois argued that practical, lived ethics should be inserted into school curricula as early as primary and middle school, and Rothstein mentioned

an initiative by a group of universities in Europe advocating for teaching ethics in all university departments.

PANEL DISCUSSION: HOW CORRUPTION EXACERBATES RIGHTS VIOLATIONS: PERSPECTIVES FROM THE FIELD

The lunchtime panel discussion, led by Carr Center Executive Director Sushma Raman, focused on the impact of corruption on human rights and poverty on the ground. Raman opened the session by summarizing some of the main themes of the morning's discussion, including that both petty and grand corruption have an effect on the most poor around the world whether through direct violations of individual rights or the depletion of public coffers that results in fragile infrastructure and inadequate provision of public goods and services.

She highlighted the following key takeaways from the morning presentations and discussions:

THE DEFINITIONS OF CORRUPTION AND THE IMPORTANCE OF AUDIENCE

THE DIVERSE CAUSAL ARGUMENTS RELATED TO CORRUPTION

THE UNIVERSAL AND ENDURING NATURE OF CORRUPTION

THE FACT THAT COUNTRIES THAT ARE MOST AFFECTED BY POVERTY AND STATE FAILURE ARE ALSO RACKED BY GROSS HUMAN RIGHTS VIOLATIONS

BRIBERY AND OTHER FORMS OF CORRUPTION BY POLITICALLY CONNECTED COMPANIES NOT ONLY SIPHONS RESOURCES AWAY FROM PUBLIC COFFERS BUT ALSO NEGATIVELY AFFECTS THE RIGHT TO LIFE, THE RIGHT TO SAFE WORKING CONDITIONS, AND OTHER FREEDOMS AND LIBERTIES

MISUSE OF PUBLIC OFFICE FOR PRIVATE GAIN AFFECTS INDIVIDUALS AND INSTITUTIONS ACROSS SECTORS -- GOVERNMENT, BUSINESS, NGO AND CIVIL SOCIETY / SOCIAL MOVEMENTS, MULTILATERAL INSTITUTIONS, SO WE NEED TO WORK ACROSS DISCIPLINES AND SECTORS AND THROUGH A MULTICULTURAL OR GLOBAL APPROACH AND FOCUS NOT JUST ON HOW BAD CORRUPTION IS, BUT ALSO HOW GOOD ANTI-CORRUPTION IS - WHAT WORKS!

Siddharth Kara, Senior Fellow at the Carr Center and Adjunct Lecturer at the Kennedy School, and Corinna Gilfillan, Head of Global Witness' U.S. Office, gave their perspectives from their experience as practitioners working on issues of human trafficking and extractive industries respectively.

Corruption plays an important role in facilitating human trafficking. Transparency International refers to corruption as the “currency” of trafficking. Siddharth Kara noted that prohibition against slavery is *jus cogens* in international law, yet somehow there are 30 to 40 million people that are slaves in the world today, and \$120 to 150 billion in annual profits to those who exploit them. Corruption is a big part of why slavery continues to exist despite the fact that human society has rejected slavery as a legitimate form of labor. Kara gave four examples to illustrate the ways in which corruption perpetuates modern slavery:

IN BOMBAY, INDIA, PROSTITUTION IS ILLEGAL YET CONTINUES TO THRIVE, FUELED BY LAW ENFORCEMENT CORRUPTION. THE OWNERS OF ILLEGAL BROTHELS ALONG FAUCKLAND ROAD PAY BRIBES TO THE POLICE EVERY DAY, AND POLICE WILL EVEN BRING BACK GIRLS WHO ATTEMPT TO ESCAPE

LAW ENFORCEMENT CORRUPTION ALSO FACILITATES FORCED LABOR IN THE SHRIMP FISHING INDUSTRY IN THAILAND. THE PEOPLE WHO ARE WORKING ON THE FISHING DOCKS ARE MIGRANT WORKERS FROM MYANMAR WHO ARE BEATEN, TORTURED, AND UNPAID. UNDERCOVER POLICE OFFICERS GUARD THE DOCKS TO MAKE SURE THAT NOTHING HAPPENS; BILLIONS OF DOLLARS ARE AT STAKE AS THAILAND IS THE LARGEST EXPORTER OF SHRIMP, AND THE U.S. ITS BIGGEST IMPORTER

IN OTHER INSTANCES, POLITICIANS AND REGULATORS ARE INVOLVED IN CORRUPTION. IN THE DRC, THE GOVERNMENT LOOKS THE OTHER WAY AS CHILDREN AND ADULTS WORK FOR BARELY ANYTHING IN A COBALT MINE IN KATANGA PROVINCE; THE GOVERNMENT RECEIVES MONEY FROM FOREIGN COMPANIES RUNNING THE MINES WHICH PROVIDE RAW MATERIALS FOR THE MULTI-TRILLION DOLLAR TECH INDUSTRY

IN CALIFORNIA'S AGRICULTURAL SECTOR, APATHY AND CORRUPTION OF OMISSION ON THE PART OF REGULATORS ENABLES VIOLATIONS OF GUEST WORKER VISA PRACTICES AND OSHA STANDARDS, WHICH ARE IN PLACE BUT NOT ENFORCED

Corinna Gilfillan discussed her work with Global Witness, which focuses on combating the resource curse: the paradox that countries rich in natural resources have less economic growth, are less democratic, and have poorer development outcomes. Corruption occurs all along the value chain--when there is secrecy around revenues generated as well as the bidding processes for the rights to extract, and the allocation and payments for those contracts. Weak rule of law and lack of accountability in these contexts also leads to human rights violations. Corruption in the oil and gas and mining sectors keeps poor people poor, props up dirty regimes, and creates national and international security issues. Gilfillan described a number of cases, including her work on "blood diamonds," accessed and sold by armed groups to exacerbate conflict and civil war. Diamond field locations were known and easy to access and therefore are easily exploited. In Afghanistan, the Taliban and other armed groups earn up to \$20 million per year from lapis mines and other abundant minerals. Oil companies Shell and Eni are facing charges of international corruption over a Nigerian oil deal, in which the companies paid \$1.1 billion for a drilling license but the funds were channeled abroad to be laundered rather than ending up in the Nigerian government's bank accounts. Global Witness discovered emails from Shell executives that revealed they knew this was happening; an amount of money equivalent to the country's entire health budget was diverted at a time when there was a major food crisis in Nigeria.

Gilfillan offered several solutions to the challenges of corruption in extractive industries: improving transparency, through NGOs like Global Witness shining a light on instances of corruption to hold companies to account and deter future corruption; passing beneficial ownership legislation in the US, which would tackle the issue of lack of transparency around who is behind corrupt companies; and protecting and supporting human rights defenders. The NGO Defenders of the Earth reported that there were a record 200 killings of people defending their land, forests, and rivers against mining, agribusiness and logging industries in 2016.

Raman asked the panelists to elaborate on the differences--and the connections--between petty and grand corruption. Global Witness is largely focused on grand corruption--billions of dollars being pocketed by corrupt politicians--but believes that transparency is a critical accountability mechanism that puts pressure on government officials at the national, regional and local levels to deter both petty and grand corruption. Kara argued that the lines between petty and grand corruption are not as clear as the definitions make it seem. The example of the Thai fishing industry shows that corruption is a spectrum; the involvement of police at the fishing docks is petty

corruption, but the ministry of fisheries at the national government level is also very much involved in keeping the forced labor system in place.

In the Q&A, Kara responded to a question about how we can impact corruption from the demand side. Kara explained that the information is not available for consumers to make informed decisions. There is also a price dimension, because a clean supply chain is more expensive. Consumers must be willing to bear a higher cost or companies willing to forgo some profit to do the right thing. Consumers can pressure government and industry to get the information they need about global supply chains to make informed choices, but for that information to be reliable there will need to be spot checks and auditing of corporate reporting.

Corinna Gilfillan was asked whether transparency is a universal solution to corruption. Global Witness does not think that transparency is the only solution; there must also be accountability. Governments should require companies to do due diligence and take action if they find evidence of corruption in their supply chains. A provision in the Dodd Frank Act requiring companies to disclose the due diligence they are undertaking to ensure they are not fueling atrocities in the Eastern Congo has resulted in a lot of progress from large companies that she believes would not have happened if those companies did not have to report and know that organizations like Global Witness would investigate and hold them accountable.

PANEL DISCUSSION: WHAT SHOULD BE DONE?

ADDRESSING CORRUPTION AND VIOLATIONS OF HUMAN RIGHTS

The afternoon panel discussion focused on potential solutions to addressing corruption and human rights violations. Alberto Mora, Senior Fellow at the Carr Center, facilitated the panel, which included Sunita Saligram, former Lead Director of PwC's International Anti-Corruption and Program Integrity Practice and a current Mid-Career MPA student at Harvard Kennedy School; Alex Whiting, Professor of Practice at Harvard Law School; Steven Livingston, Senior Fellow at the Carr Center and Professor of Media and Public Affairs at George Washington University; and Matthew Stephenson, Professor of Law at Harvard Law School.

Mora opened the panel and welcomed the speakers. Sunita Saligram began her remarks by describing an example of the consequences of corruption from her own experience working on the Ebola crisis in West Africa, when cash for Ebola response in Sierra Leone was stolen. Drivers who were supposed bring doctors to villages to treat patients went on strike to protest their missing wages. The medical professionals were not able to reach the patients, and Ebola began to spread more rapidly in those communities, all as a result of the stolen cash. Corruption kills, and must be understood as a human rights issue, Saligram said. Multilateral donors understand how corruption limits development, yet they do not do nearly enough to address the root causes of corruption.

Almost a third of development aid is lost to corruption. The problem is twofold: donor responses to corruption are reactive rather than proactive, focusing only on holding the supply side accountable (such as how the World Bank INT debars companies) and rarely talking about government officials who are involved in corrupt activities, and donors do not focus enough on strengthening institutions' capacity to prevent corruption in the first place. Anti-corruption initiatives are masked as governance programs and often create an enabling environment for corruption. Saligram offered several things that donors can do to more effectively combat corruption, including:

1. Convene all development banks to produce a joint integrity standard holding the demand side accountable
2. Increase cooperation between proactive and reactive bodies and increase capacity of the governance arms
3. Work with the private sector and invest in innovative solutions like e-procurement platforms, citizen engagement tools, and blockchain
4. Create a legitimate accountability mechanism that has more "teeth" than the UNCAC

Alex Whiting discussed some of the lessons learned from the ICC and international tribunals such as the ICTY for addressing corruption. He offered a note of caution--that the ICC has been in existence for 16 years and we are 25 years into the international criminal law project, but the jury is still out on the effectiveness of these mechanisms as a model for an International Anti-Corruption Court such as the one proposed by Judge Wolf. There will need to be sustained political commitment from countries where crimes of corruption are being prosecuted, or from powerful countries that can force those countries to comply. By design, international tribunals do not have power; they are shells created by sovereign states that only succeed when there is political will for a

particular case. Kenya, for example, created the handbook on how to evade the ICC. Sudan and Libya have both been referred to the ICC by the UN Security Council but there is no political will for a trial. It is particularly challenging to do financial investigations at the ICC because the body does not have subpoena power. Because international courts are embedded in sovereign power, Whiting argued, the very powers defeating accountability today are the powers that could defeat international accountability in the future.

On a more positive note, he added that the international criminal law project has changed the narrative on accountability. Although accountability for war crimes is front and center, Judge Wolf's proposal for an International Anti-Corruption Court has the possibility of changing the narrative around corruption and accountability by making corruption more visible. According to Luis Moreno Ocampo, "the power is in the shadow of the court" and the ripple effect it has. Whiting also described an initiative at the ICC, Strategic Goal #9 of the Prosecutor's Strategic Plan, that is an effort to break the silos, looking for ways to combat international atrocity crimes using other tools where there may be more resources or more political will. Corruption, organized crime, narco-trafficking, and human trafficking could be more effective ways to prosecute corrupt officials, rather than trying to combat genocide or crimes against humanity.

Steven Livingston's remarks focused on the relationship between corruption and governance. Human rights abuses and corruption both could be products of lack of governance capacity. One way of addressing governance gaps could be to use the tools and technologies that are available to civil society organizations and networks. Livingston described an alternative take on the idea of failed or fragile states put forth by Thomas Risse: "areas of limited statehood," which is characterized by a state's inability to implement and enforce a monopoly of force. Areas of limited statehood can be evident along several different dimensions: territorial, sectorial, social, and temporal. The sectorial dimension--in which a state is not able to enforce a monopoly of force in certain sectors--is particularly significant for corruption.

Livingston noted that the common approach to addressing the lack of governance capacity is state building, but this is a large and difficult endeavor. We need to look instead for "functional equivalence" to fill in governance gaps. We could look to fill these with alternative governance modalities, e.g. NGOs, community-based organizations, tribal systems. Information and communication technologies can facilitate alternative governance modalities and citizen oversight in areas of limited statehood. For example,

the “I Paid a Bribe” website in India enables individuals to report instances in which they were asked to pay a bribe. Another example in Nigeria is Stop the Bribes, which uses an open source platform to track and disaggregate corruption by categories, such as illegal road blocks or unlawful detention.

Geospatial technology like remote sensing satellite imagery can also facilitate oversight; in Russia, Navalny’s anti-corruption foundation has used drones to investigate the real estate holdings of Prime Minister Medvedev. Livingston explained that there are limitations to the approach of using technology to fill governance gaps, however. It is a strategy that relies mostly on naming and shaming and has no direct enforcement capacity. Public engagement with platforms tends to atrophy over time, and crowdsourcing can also put individuals at risk if done incorrectly. Furthermore, such efforts tend to focus on the physical manifestations of corruption and do not address the global enabling systems like opaque financial systems that contribute to continuing impunity.

Matthew Stephenson’s remarks touched on three themes that he felt had not been touched on strongly enough. First, while it is true that so-called “bad actors” are criminals and need to be held accountable, criminal accountability is often challenging even for domestic cases. Kleptocrats have many procedural protections in place, criminal burdens of proof are high, and there may be lack of political will or capacity. It may be feasible in the long run to create a system of international criminal accountability, however we are already seeing forms of individual accountability that are not criminal. Civil asset forfeiture, for example, is a judicial proceeding but does not require truth beyond reasonable doubt. Some countries have created burden shifting rules, that shifts the burden onto suspected criminals to prove how they acquired disproportionate assets if they are from a country considered to have a high risk of corruption. The Global Magnitsky Act imposes targeted sanctions that restrict access to the U.S. financial system for individuals listed by the State Department, whose names are typically put forward by civil society. Issuing travel bans for individuals is another tool for individual accountability, but at least in the US the visa denial system is a “black box” outside of the judicial system. There is some concern that these tools are liable to abuse, because they can be used to target individuals on the basis of criminality but not through a judicial process.

The second theme Stephenson discussed was that although the anti-corruption and human rights agendas are aligned, we should also be alert to tensions between these

agendas. Human rights can be infringed upon when governments overreach in their anti-corruption efforts. There is also a troubling pattern that countries that have made the greatest strides in corruption do not have the strongest records on human rights and civil liberties. Authoritarians and demagogues can exploit anti-corruption rhetoric for purposes that are not consistent with human rights, such as cracking down on dissent.

The third theme that Stephenson felt had not been adequately addressed was what is gained by the framing that corruption is in and of itself a human rights violation. He suggested it was not obvious that this is helpful rhetoric to all stakeholders. This framing may have legal ramifications or have some additional political benefit compared with the alternate framing that corruption causes human rights violations. However, many people outside of the human rights community care more about corruption than human rights.

In the question and answer session, Pascale Dubois responded to Sunita Saligram's claims that the World Bank needed to take more proactive action, pointing out that the World Bank's limited jurisdiction means that there is a limit to who they can legally hold accountable. However, Dubois strongly agreed that the World Bank needs to engage the private sector better so that they can be part of the solution, and the World Bank is increasingly working to bring public and private sector stakeholders together.

Responding to a question about whether grassroots pressure through democratic processes was necessary in addition to international anti-corruption pressure, Stephenson noted that although countries that have been very democratic for a very long time do seem to be less corrupt than other countries, if you exclude those countries in that "tail" there is no strong correlation between democracy and perceived corruption. Democratization may not be necessary to reduce corruption. There was some debate about Stephenson's remarks about the usefulness of framing corruption as a human right. Audience members noted that the advantage of elevating any issue to the level of a human right is that it establishes a universal norm that becomes more difficult to dismiss, it emphasizes state responsibility, and emphasizes that corruption has victims. Stephenson responded that UNCAC establishes anti-corruption as an international norm; human rights framing does not add to that and may alienate some countries who see human rights as a Western imposition.

APPROACHES AND SOLUTIONS

- Develop conceptual clarity on definitions, identify areas of alignment--and divergence--between corruption and human rights, and what the two movements can learn from each other
 - Develop case studies that are cross-disciplinary and global to better understand the role of different institutions and effective approaches
 - Focus on what works: demonstrate the effect of anti-corruption efforts, provide incentives for private sector, public sector, and multilateral organizations (including donor agencies) to proactively integrate anti-corruption efforts into their work, and focus on both the demand and supply side
 - Learn more about the opportunities--and limitations--of transparency and accountability efforts for combating corruption, learning from the experience of accountability mechanisms for human rights violations
 - Identify the potential for new institutions, such as CICIG and the proposed IACC, to combat corruption
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CLOSING REMARKS

Kathryn Sikkink, Sushma Raman, and Mark Wolf offered closing remarks. Sikkink highlighted that one of the themes of the discussions over the course of the day was the efficacy of punishment and accountability via prosecution versus diffusion of anti-corruption norms for long-term change. She noted that these are not as distinct as we have been suggesting. Punishment and accountability may help create a tipping point that facilitates the creation and internalization of norms. Sikkink also revisited the theme of evidence, noting that it is very hard to have good numbers about change in human rights or in corruption. These numbers are being created by the human rights and anti-corruption movements, and the more data they generate, the worse things look.

Raman summarized that corruption impacts human rights in four ways:

- It affects the poor more than the rich, limiting the ability of the poor to achieve a range of economic and political rights.
- It limits the ability of the state to garner revenue and spend on the needs of its citizens.
- Illicit money may be tied to illicit activities such as modern slavery and trafficking.
- The design of institutions, laws, and policies benefit the powerful at the expense of the poor.

She argued that it is necessary to frame corruption in terms of human rights because otherwise we will only have top-down programs that miss the reality of corruption's disproportionate effect on the poor.

Finally, Wolf closed by urging the audience to note that corruption is a long term challenge that will not ever be completely eradicated; we will need continued efforts in this regard. He was encouraged to hear so many of the speakers refer to the problem of silos, and noted that the symposium had been an important case of trying to move beyond those silos and hopefully the first of many collaborations.