Testimony of Michael J. Camilleri
Director, Peter D. Bell Rule of Law Program, Inter-American Dialogue
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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 *sina 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.