

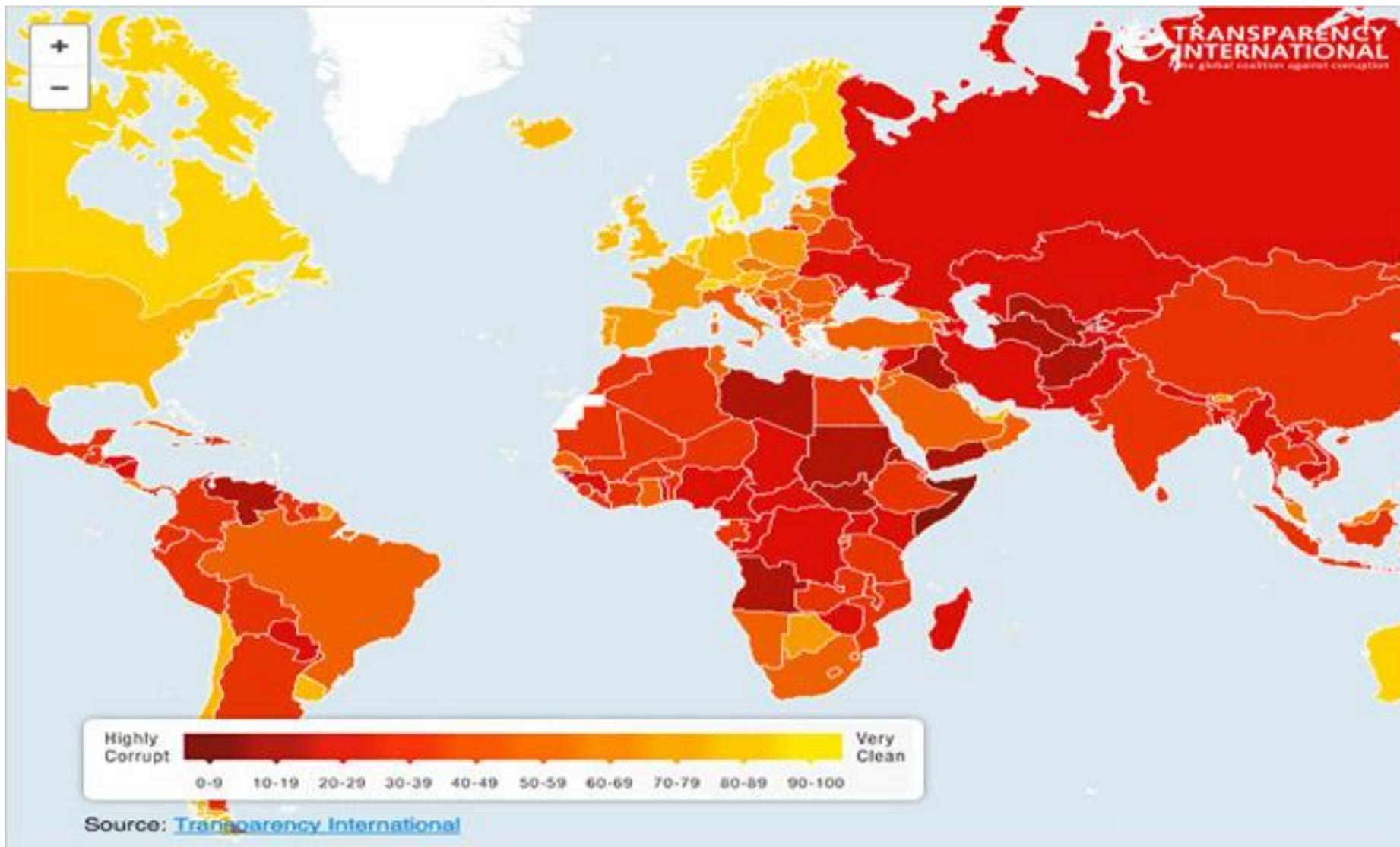


UNIVERSITÀ DEGLI STUDI DI MILANO
FACOLTÀ DI GIURISPRUDENZA

COMBATING CORRUPTION UNDER INTERNATIONAL LAW

Chiara Ragni

MEASURING CORRUPTION



- **Corruption seriously undermines good governance because it erodes popular confidence in public institutions, favours inefficient economic decision-making, enhances unequal distribution of development gains and stimulates the illegal export of capital.**
- **Corruption, because of its nature, has distorted the economic decision-making process in many countries because the public officers expect to receive payment of bribes and nothing moves without that (for instance, not only will decisions in selecting the most economic suppliers be perverted but also totally unnecessary or inappropriate projects may be undertaken or contracts signed).**
- **Corruption generates allocative inefficiency by permitting the least efficient contractor with the highest ability to bribe to be the recipient of government contracts. Besides, the cost of bribes is included in the price of the goods produced.**
- **Corruption distorts social decision-making process in that it affects recruitment and promotion patterns of labour. The most efficient employees may not be recruited at all and the allocation of positions may be inefficient.**
- **Corruption generates inequality and above all....**



Corruption kills... in Africa as well as around the world because it drains off resources that should be used to lift people out of poverty



Repression takes many forms, and too many nations are plagued by problems that condemn their people to poverty. No country is going to create wealth if its leaders exploit the economy to enrich themselves, or police can be bought off by drug traffickers. No business wants to invest in a place where the government skims 20 percent off the top, or the head of the Port Authority is corrupt.

No person wants to live in a society where the rule of law gives way to the rule of brutality and bribery. That is not democracy, that is tyranny, and now is the time for it to end.

In the 21st century, capable, reliable and transparent institutions are the key to success - strong parliaments and honest police forces; independent judges and journalists; a vibrant private sector and civil society. Those are the things that give life to democracy, because that is what matters in peoples' lives

(Barack Obama, Speech to the Parliament of Ghana, 11 July 2009)



THREE OPTIONS TO COMBAT CORRUPTION UNDER INTERNATIONAL LAW

CORRUPTION AS A TREATY BASED
TRANSNATIONAL CRIME

CORRUPTION AS A HUMAN RIGHTS VIOLATION

CORRUPTION AS AN INTERNATIONAL CRIME

2003 UNITED NATIONS CONVENTION AGAINST CORRUPTION (UNCAC)

The UNCAC is the first truly global anti-corruption treaty. It was adopted by the UN General Assembly ('UNGA') on 31 October 2003 and entered into force on 14 December 2005.

The high number of signatories and ratifications (181 States Parties) reflects the broad international consensus on the UNCAC.

It provides for different kinds of obligation upon Member States (preventing and **CRIMINALIZING CORRUPTION**, inter-state cooperation, asset recovery, implementation review mechanism)



LIMITS OF THE TREATY BASED TRANSNATIONAL CRIME APPROACH

- **No definition of corruption:** No worldwide single accepted definition of corruption: it depends on cultural, legal... elements. Although specific instances and forms of corruption are culturally determined and a generalised definition of corruption behaviour is difficult, there are some conducts that, according to an ordinary's person definition, may be in principle included in the concept of corruption.
- **The prosecution of transnational crimes is wholly dependent upon national prosecution.** Even with comprehensive international treaty, it is up to each Member State to either prosecute locally or to cooperate with its counterparts.
- **Inter-state cooperation in prosecuting corruption under the aut dedere aut juficare principle is subjected to double criminality** (the same crime should exist in both states → the will of states to cooperate is still fundamental).
- **Often states lack of adequate procedural and evidentiary laws.**
- **National criminal courts often are unwilling or unable to prosecute corruption** (maybe they are themselves corrupted; problem of immunities...).
- **International treaties lacks of a strong mechanism of enforcement.**



CORRUPTION AS A HUMAN RIGHTS VIOLATION

Direct violations → Corruption may be linked directly to a violation **when a corrupt act is deliberately used as a means to violate a right** (a bribe offered to a judge directly affects the independence and impartiality of that judge and hence violates the right to a fair trial).

Corruption may also directly violate a human right when a state (somebody acting in an official capacity) **acts or fails to act in a way that prevents individuals from having access to that right** (when an individual must bribe a doctor to obtain medical treatment at a public hospital, or bribe a teacher at a public school to obtain a place for her child at school, corruption infringes the rights to health and education).

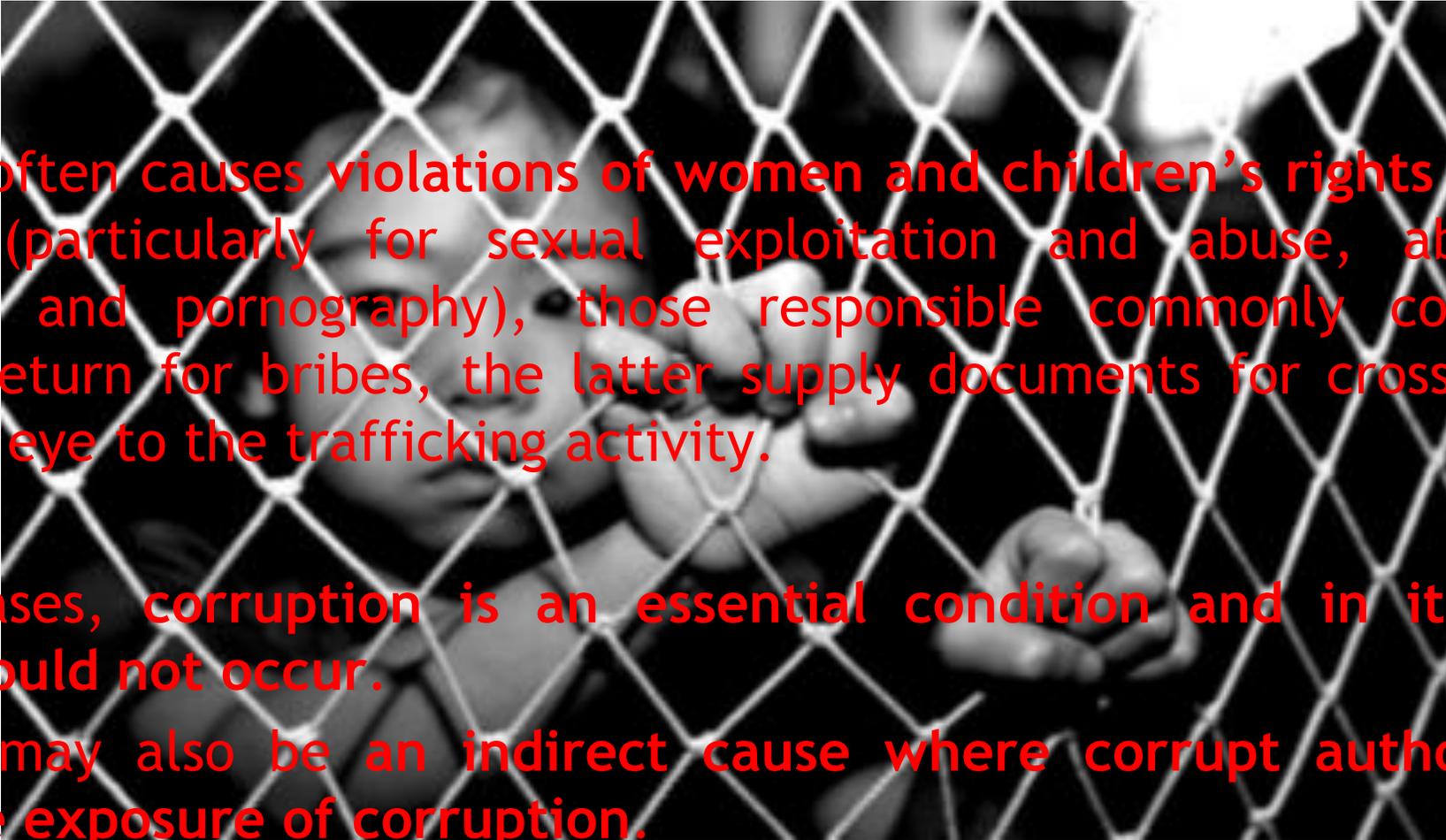


Indirect violations (corruption as a necessary condition) → Even without a direct connection, therefore, corruption may be an essential contributing factor in a chain of events that leads to a violation, and so may violate human rights indirectly.

Corruption often causes violations of women and children's rights when they are trafficked (particularly for sexual exploitation and abuse, abduction, sale, prostitution and pornography), those responsible commonly corrupt officials. Usually in return for bribes, the latter supply documents for crossing borders, or turn a blind eye to the trafficking activity.

In these cases, corruption is an essential condition and in its absence the violation would not occur.

Corruption may also be an indirect cause where corrupt authorities seek to prevent the exposure of corruption.



DIFFICULTIES TO...

- Establish the causal link between the corrupt practice and the harm.
- Establish how direct the connection is between the corrupt act and harm suffered by the victim on the one hand, and the content of the human right and the obligation required from the state on the other hand.
- Ascertain the responsibility of the state for the damage caused.
- Identify the victim(s).
- Identify who is the rights-holder of the human right in question
- Determine which forms of reparation would be adequate for the given case (e.g. restitution, compensation, satisfaction, etc.).



CORRUPTION AS AN INTERNATIONAL CRIME?

- **Threat to peace and security** → petty corruption does not constitute such a threat, since its consequences will be felt first and foremost within the country where the corrupt act takes place. What about grand corruption?
- **The conduct offends the commonly shared values of the world community** → certain forms of large scale corruption are offensive to the common values of the world community. **Large scale looting of a developing country's public funds by its own high-level public officials may lead a country to massive poverty.**
- **International necessity** → this element is present whenever there is recognition by the world community that certain conduct must be criminalised at the international level for effective control. **The prohibition of corruption must be enforced by joint efforts and cooperation of more than one State because one single State will not succeed in doing so.**

CONCLUDING REMARKS

Full eradication of corruption around the world still amounts to wishful thinking. International law alone is not sufficient when corruption is firmly rooted in society.

The functioning of international treaties on corruption still largely depends upon the will of Governments, that, together with transnational corporations and financial institutions have a strong responsibility to tackle corruption.

The use of human rights law should contribute to give a face to the victims of corruption, while international criminal law should contribute to give a face to its perpetrators, even if, again, there are some problems of implementation depending on the will of states.

“All this will not be finished in the first 100 days. Nor will it be finished in the first 1000 days, nor in the life of this administration, nor even in our lifetime on this planet. But let us begin” (J. F. Kennedy, Inaugural Address).

