



# Illicit Financial Flows Undermining Gender Justice

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- This paper explores some of the links between tax- and gender justice at the global level by highlighting two central ways in which illicit financial flows and gender injustice are connected.
- First, through the effects of tax evasion and avoidance and secondly, through the role of financial secrecy jurisdictions and global networks of facilitators which enable illicit financial flows which result from trafficking in women.
- The paper argues that confronting and dismantling the global enablers and secrecy jurisdictions will be beneficial not only for transparency and global equality but also for achieving greater gender equality and the respect, protection and fulfilment of the human rights of women and girls.
- The analysis ends with a list of policy recommendations for the global as well as the national level and thus provides guidance for combating tax evasion, avoidance and dodging, as well as money laundering derived from criminal activities.



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## List of Abbreviations

<b>FIUs</b>	Financial Intelligence Units
<b>FSI</b>	Financial Secrecy Index
<b>GVC</b>	Global Value Chain
<b>GWC</b>	Global Wealth Chain
<b>ICIJ</b>	International Consortium of Investigative Journalists
<b>IFFs</b>	Illicit Financial Flows
<b>ILO</b>	International Labour Organization
<b>LAC</b>	Latin America and the Caribbean
<b>LSA</b>	Location Specific Advantages
<b>Lux-Leaks</b>	Luxembourg Leaks
<b>MNEs</b>	Multinational Enterprises
<b>OECD</b>	Organization for Economic Co-operation and Development
<b>PROTEX</b>	Prosecutor's office in charge of human trafficking and exploitation
<b>PROCLEAC</b>	Prosecutor's offices in charge of affected Economic Crimes and Money Laundering
<b>TJN</b>	Tax Justice Network

## I. Introduction

To understand some of the key connections between tax and gender justice it is important to look at the following three interlinked factors that affect the fiscal revenue-raising capacity of states and how this revenue is distributed throughout society: i) tax burden, ii) tax structure and iii) policies and mechanisms to tackle tax evasion and tax avoidance nationally and internationally.

Tax policies are not neutral; they can hinder or promote social equality and gender equality. Women and men experience the impacts of tax policies differently, because of their diverse and unequal positions in the workforce, as consumers, producers, asset owners, and as those responsible for the activities of the »care economy« in households and outside. Moreover, gender inequality intersects with other inequalities which result from socio-economic status, race, age, location, caste and other social markers.

Most of the existing literature has focused on understanding the gender dynamics of tax structures at a national level.<sup>1</sup> Less explored are the international dimensions of gender and taxation. Brooks analyses the role of tax treaties in allocating tax revenues between countries and proposes some ways to allocate a greater portion of international tax revenues for the advancement of gender equality in low-income countries (2009). Other efforts have focused on advocating for an intergovernmental tax body and for providing it with gender expertise and a mandate to review national, regional and global tax policy according to gender equality and human rights obligations.<sup>2</sup>

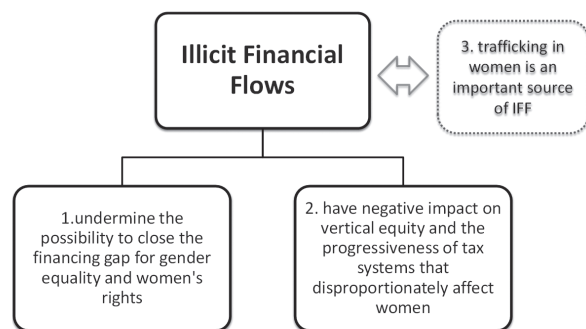
However, there has been relatively little work done on the effects of tax abuse, of shifting profits using low and zero tax jurisdictions, of the current international tax architecture on gender inequality. There has been even less work done on the effects of illicit financial flows (IFFs), which takes into consideration not only the outcomes of tax evasion and avoidance,<sup>3</sup> but also the flows

related to the laundering of money from criminal activities.<sup>4</sup> Among the international crimes that generate IFFs is human trafficking, which heavily impacts women. The proceeds from such exploitation appear to be laundered using the same structures, mechanisms, jurisdictions and enablers as those of tax evasion and avoidance.<sup>5</sup>

Moreover, such human trafficking is linked with the activity of Multinational companies. In order to grow a distance from the exploitation and trafficking in persons, multinational companies create intermediary entities, outsource the most precarious stage in the chain (where most labour trafficking and exploitation take place) and then do »outsourcing«. Profits from such exploitation are integrated into the Global Value Chain (GVC) which serves the purpose of hiding, obscuring and relocating wealth, breaking loose from the location of value creation.<sup>6</sup>

Human trafficking for labour is combined with other mechanisms that are applied with the objective of cross-border tax abuse and profit shifting, providing a link between human trafficking and illicit financial flows.

Figure 1: Three links between global tax justice and gender justice



Therefore, this paper will attempt to provide an introductory analysis of the ways in which IFFs and gender justice are connected, with a focus on Latin America. For this purpose, Section II will analyse the negative impact the loss of tax revenues has on the fulfilment of wom-

1. See Grown & Valodia (2010); Pazós Morán & Rodríguez (2010); Coello Cremades & Fernández Cervantes (2014).

2. See WWG on FFD (2015), DAWN (2015).

3. In the context of this document we consider tax avoidance to be as illicit as tax evasion following Cobham's (2014) understanding of »illicit« as »forbidden by law, rules or custom« —encompassing not only the illegal but also including the socially unpalatable, such as the multinational corporate tax avoidance that is the target of the OECD BEPS (Base Erosion and Profit Shifting) initiative; and Rua's (2014) analysis concluding that »illicit fiscal avoidance« refers to abusive practices that, even when complying with the law, are contrary to the purpose and spirit of the legislative framework.

4. In terms of spill over effects of tax policies, Berne Declaration et al. (2016) highlight Switzerland's responsibility for the impacts of cross-border tax abuse on the rights of women, especially in developing countries.

5. See section B.

6. See Seabrooke and Wigan (2014) for an analysis of Global Wealth Chains and their interrelation with Global Value Chains and economic activity.

en's and girl's human rights and on gender justice and on efforts tackling vertical inequality; Section III provides an introductory analysis of illicit financial flows and trafficking of women; and Section IV provides some final reflections and recommendations.

## II. Loss of Tax Revenue and the Negative Impacts on Realizing Women's and Girl's Human Rights and on Tackling Inequalities

States acting individually and collectively have the duty to mobilize the maximum available resources for the progressive realization of women's and girl's human rights. Furthermore, they have the obligation to create an international enabling environment for the fulfillment of economic, social and cultural rights, including in matters relating to taxation.<sup>7</sup>

Taxation is the most sustainable and predictable source of financing for the provision of public goods and services, as well as a key tool for addressing economic inequality, including gender inequality. However, tax policy currently fails to generate enough revenue to fund government expenditures and to close the gaps in gender equality and women's rights financing.

Focusing on the case of Latin America and the Caribbean (LAC), low tax to GDP ratios can be explained by a combination of factors. Despite the tax reforms in previous years,<sup>8</sup> the average tax burden remains low in view of the region's relative level of development and financing needs. For the period 2010–2014, the average tax burden in the region was half of the average in 15 countries of the European Union (18,7 per cent of GDP and 38,3 per cent of GDP respectively and was 15 GDP points below the average of the Organization for Economic Co-operation and Development (OECD) countries (ECLAC, 2016a: 43). It should be noted that by comparing averages the large difference between individual countries is hidden.

Regarding tax structure, less than one third of LAC tax revenue comes from direct taxes, while the bulk comes

from consumption taxes and other indirect taxes. The region has raised an average of 9.4 per cent of GDP in indirect taxes during the period 2010–2014 (compared to 10.9 per cent of GDP in OECD countries); and it raised 5.7 per cent of GDP from direct taxes, which is far less than the 13.8 per cent in the OECD countries (ECLAC, 2016a: 43).<sup>9</sup>

Moreover, after more than three decades of financial globalization and increasing corporate power there is little taxation of capital assets and tax incentives schemes are unbalanced. International trade and investment agreements restrict government's capacity to reconsider tax breaks and implement progressive tax reforms. As a result of this, the policy space and political will of governments to collect revenue and implement progressive taxation is limited. Governments give favourable tax treatment to multinational companies in many countries in the region. The result is that considerable revenue is forgone and that the equity principle by which persons with equal capacity to pay should pay the same amount in taxes (horizontal equity), and that those with greater capacity should pay a proportionally larger amount (vertical equity) is violated. By some estimates, the tax burden for national businesses is twice the burden borne by multinational companies. (ECLAC & OXFAM, 2016: 6)

Moreover, the redistributive capacity of tax and social protection systems is very limited in the region. While the OECD countries reduce the Gini coefficient<sup>10</sup> for household incomes by an average of 35 per cent through taxes and transfers, the reduction in Latin America is only six per cent (ECLAC, 2014: 36).

It should also be pointed out that over time, the source principle of taxation—taxing income where it is originated—has been more and more globally replaced (in double tax treaties first but later also in developing countries' local legislations) by the residence principle which favours the jurisdiction of origin of the capital (Figueroa, 2005). Considering the fact that Latin American countries are mainly capital importers, while developed countries are mainly exporters of capital, such an evolution of international taxation has tended to favour developed countries more often than developing ones.

7. See A/HRC/26/28, 2014, Para 31. See Corti (2011), Troya Jaramillo (2014) and Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (2011).

8. For a detailed analysis of tax reforms over the course of a decade in the region see ECLAC Fiscal Panorama reports: <http://www.cepal.org/en/topics/fiscal-affairs>.

9. In most cases, VAT explains most of indirect taxation revenue.

10. Gini coefficient is a measure of inequality, which goes from 0 (perfect equality) to 1 (perfect inequality).

To fully understand the persistent inequalities and the revenue losses in the region, it is necessary to complement the analysis of the LAC region's **narrow and regressive tax base** with a third element: the **high non-compliance levels**.

According to ECLAC, the rate of **tax evasion** is up to 2.2 per cent of GDP in the case of VAT and 4.1 per cent of GDP in the case of income tax. This resulted in a total of 320 billion US dollars in 2014 (ECLAC, 2016a: 6). The cost of revenue losses due to tax evasion is thus extremely high.

To get a more comprehensive picture that also takes the current transfer of resources from Latin America to developed countries into account, it is necessary to focus on **IFFs**. They represent a huge outflow of financial resources from the region that far exceeds the entry of other financial flows. Illicit capital outflows from Latin America and the Caribbean amounted to an annual average of some 150 billion US dollars between 2004 and 2013, while in the latter year they reached more than 200 billion US dollars (ECLAC, 2016b: 148).<sup>11</sup>

*Swissleaks* revealed that 52,600 million dollars of funds of Latin American residents were in HSBC bank accounts in Switzerland in 2006 and 2007. This is equivalent to 26 per cent of total public investment in health across the region (CEPAL & OXFAM, 2016: 14).

Luxembourg Leaks (*Lux-Leaks*) revealed almost 28,000 pages of leaked tax documents showing multibillion-euro tax deals which the Luxembourg government made with companies including Amazon, Ikea and Shire Pharmaceuticals; allowing them to save millions in taxes, to the detriment of those countries where these companies performed their economic activities.<sup>12</sup>

In Argentina, the ex-vice-president of JP Morgan, Hernan Arbizu, revealed that Argentineans held nearly 85,000 million dollars in offshore stocks (Gaggero, Rua, Gaggero).

11. Henry (2012) estimates that at least 21 to 32 trillion US dollars (2010) had been in «offshore» low or zero tax secrecy jurisdictions; and that «(...) developing countries might be losing as much as 120–160 billion US dollars per year in lost tax revenue on the interest and other income generated by all this unreported anonymous wealth—more than the entire global total of foreign aid from OECD countries. Most of this unreported income was either retained abroad and reinvested or spent on shopping trips in Paris, London or Miami.»

12. See <https://www.theguardian.com/business/2014/nov/05/what-do-you-want-to-know-about-luxembourgs-multi-billion-dollar-tax-secrets>.

More recently, the International Consortium of Investigative Journalists (ICIJ) published information on 214,000 offshore entities that were created by the law firm Mossak Fonseca in 21 jurisdictions.

What are the **implications of these findings for women's human rights and gender justice?** When a state does not mobilize sufficient resources and has budget shortfalls it can only provide insufficient and low quality services (i. e. education, health, sanitation, public transport, social infrastructure, care services), whereby gender inequalities are perpetuated or even exacerbated. This is due to the fact that, given the unequal gender power relations in society, women are overrepresented among the poor and among those that hold low-paid and poor-quality jobs. They are also more dependent on state provisions and tend to carry the brunt of more unpaid care work when states cut social services.

Moreover, when a state's ability to collect revenues and control IFFs is more restricted, revenue loss tends to be compensated through higher taxes on compliant taxpayers, such as small and medium-sized companies and individuals (Ritter, 2015) or by relying more heavily on indirect taxation. Therefore, if states do not tackle tax abuse, they are likely to be disproportionately benefiting wealthy individuals to the detriment of the most disadvantaged. Also, international tax avoidance, tax havens and the offshore secrecy system have been found to give corporations that make use of these avoidance opportunities very significant competitive advantages over national firms (Picciotto, 2013).

There is also a gender dimension to this, since women are overrepresented in small and medium enterprises (that benefit less from avoidance opportunities) and at the bottom of the income ladder. The report of the UN Special Rapporteur on Extreme Poverty and Human Rights acknowledges that women tend to use larger portions of their income on basic goods because of gender norms that assign the responsibility for the care of dependents to them. This means that they bear the brunt of consumption taxes (A/HRC/26/28, 2014, Para 46).

The report also recognizes that high levels of tax abuse undermine the principles of equality and non-discrimination, since evaders end up paying less than taxpayers with the same—or less—financial capacity. High net-worth individuals and large corporations also have a far

greater ability to evade taxes as they are able to pay tax advisers, lawyers and accountants (who may sometimes provide inappropriate advice and assistance) and to open undeclared foreign bank accounts in low-tax jurisdictions. (A/HRC/26/28, 2014, Para 60)

A complementary perspective is brought in by the report of the Independent Expert on the effects of foreign debt on the enjoyment of human rights. It states: »Even if they [IFFs] are repatriated after they have been laundered abroad or offshore, they tend to be reinvested into luxury residential property and other luxury goods, increasing inequality rather than being allocated to strengthening the rule of law, or judicial, health, education or social security systems, for the benefit of the common good. Frequently illicit inflows fund further crime, including organized crime, human trafficking, piracy, the illicit arms trade and terrorist activities undermining the rule of law, peace and security, and human rights«. (A/HRC/28/60, 2015, Para 11)

Latin America and the Caribbean is the most unequal region of the world. Monitoring and curbing IFFs seems crucial for closing the financing gap to realize women's rights and gender justice as well as to reduce horizontal and vertical inequalities. »In many of the region's countries, the growth slowdown and deterioration of the terms of trade have had profound effects on the public finances, triggering substantial fiscal adjustments, because the available fiscal space has shrunk« (ECLAC, 2016a: 13). However, from our perspective, fiscal space can be substantively expanded in the region by introducing more progressive tax regimes and by tackling illicit financial flows.

### III. Illicit Financial Flows and Women's Trafficking

There are two main definitions of IFFs. One equates »illicit« with »illegal«, so that IFFs are movements of money or capital that is illegally earned, transferred and/or utilized from one country to another. This would include individual and corporate tax evasion but not tax avoidance (which is understood as legal by this definition), and other criminal activity such as bribery or the trafficking of drugs or people. The other (e.g. Cobham, 2014) relies on the dictionary definition of »illicit« as »forbidden by law, rules or custom« —encompassing the illegal but also in-

cluding the socially unpalatable, such as the multinational corporate tax avoidance that is the target of the OECD BEPS (Base Erosion and Profit Shifting)<sup>13</sup> initiative (CBBA and FTC, 2014). This second definition is also supported by Rua's (2014) analysis concluding that »illicit fiscal avoidance« refers to abusive practices that, even when complying with the law, are contrary to the purpose and spirit of the legislation. In this document we will consider tax avoidance to be as illicit as tax evasion. The main sources of illicit tax evasion are: commercial tax evasion, trade mis-invoicing and abusive transfer pricing, the laundering of the proceeds of criminal activities and corrupt payments, the theft of state assets (Cobham, 2014 and Baker, 2005) and capital flight.<sup>14</sup>

The way in which such illicit financial flows take place is through commercial and investment transactions. Export underpricing and import over-pricing can serve the purpose of shifting criminal proceeds out of the country, as well as inward investment underpricing and outward investment over-pricing.

Regulations addressing these problems distinguish between the initial **crime** that generates the assets (e.g., tax evasion when considered a tax crime, human trafficking, drug trafficking) and the **money laundering** of the assets arising from the criminal activity. The regulations relate to two different moments of the crime and may involve two different organizational structures.

The **laundering of assets** is the process by which profits obtained in an illicit form are introduced into the legal economic-financial system. Money laundering is a dynamic three-stage process:<sup>15</sup> i) »placement« of illicit funds into the financial system by breaking large sums into smaller parts in order to circumvent anti-money laundering laws (removing the funds from direct association with the crime); ii) »layering«<sup>16</sup> with the purpose of concealing the criminal origin of the proceeds and; iii) »integration«, in order to make the money available to the criminal again. This can take place for instance by buying luxury goods or

13. The G20/OECD Base Erosion and Profit Shifting (BEPS) delivered its 15 final outputs in October 2015, two years after its launch in July 2013.

14. As has been already described in a previous footnote, capital flight understood in a broad manner can include both licit and illicit funds abroad.

15. See Ritter (2015) and <https://www.unodc.org/unodc/en/money-laundering/laundrycycle.html>.

16. Ritter (2015: 18) provides examples of how this takes place through fictitious sales and purchases, shell companies, wire transfers, splitting and merging of bank accounts or by using underground banking.

real estate and consumer goods for export purposes, or by making commercial/industrial investments.

The initial crime can be any illegal activity. In the following section we discuss one such activity that represents an extreme violation of women's human rights: trafficking in women.

### A. Trafficking in Persons and Women's Human Rights

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (known as Palermo Protocol),<sup>17</sup> defines trafficking in persons as »the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs« (art. 3(a)).

This definition consists of three core components:<sup>18</sup>

1) The action of trafficking, which means the recruitment, transportation, transfer, harboring or receipt of persons; 2) The means of trafficking, which includes threat of or use of force, deception, coercion, abuse of power or position of vulnerability; 3) The purpose of trafficking, which is always exploitation (either labour or sexual exploitation).

Trafficking involves **human rights violations** and it is a crime against the person. Victims of human trafficking are bought, kidnapped, or enticed with job offers, transported across borders, and coerced into exploitation.

**Sexual exploitation** is one of the purposes of trafficking in women. It is considered that trafficking takes

place in regard to a commercial sex act, when it is the result of force, threats of force, fraud, coercion or any combination of such means (Department of State, 2015). It may also happen within debt bondage, as individuals are forced to continue in forced prostitution because of unlawful »debt«, »purportedly incurred through their transportation, recruitment, or even their crude »sale«, which exploiters insist they must pay off before they can be free« (Department of State, 2015: 7). It is within this context that an adult's consent does not stand in the way of it being considered exploitation, as people forced into prostitution through psychological manipulation or physical force are considered victims.

**Forced labour** is the other common purpose of trafficking in persons. It takes place when a person uses force or physical threats, psychological coercion, abuse of the legal process, deception, or other coercive means to compel someone to work. Migrants are particularly vulnerable to this type of labour exploitation within a trafficking chain, although nationals can also become victims. Debt manipulation is also one of the main methods by which trafficked workers are exploited. Document confiscation is also a common and key practice in the exploitation of trafficked migrant workers (Department of States, 2015). The sectors most frequently documented are agriculture and horticulture, construction, garments and textiles under sweatshop conditions, catering and restaurants, domestic work, entertainment and the sex industry. However, human trafficking also affects other mainstream economic sectors, including food processing, health care and contract cleaning, mainly in private but also in public sector employment, such as the provision of healthcare services.<sup>19</sup> Women and girls are particularly vulnerable to this type of trafficking and exploitation in domestic servitude. It is also common that they are victims of forced labour and sexual exploitation at the same time.

**Involuntary domestic servitude** is also a form of human trafficking found in distinct circumstances (work in a private residence) that creates unique vulnerabilities for victims. It is a crime in which a domestic worker is not free to leave, is abused, not paid or underpaid. Domestic workers in servitude are mostly women and they are faced with various forms of abuse, harassment, and sexual and gender-based violence (Department of State, 2015).

17. The protocol supplements the UN Convention against Transnational Organized Crime. It was approved in 2000 and signed, at that time, by 80 countries.

18. See [http://www.unodc.org/unodc/en/human-trafficking/faqs.html#What\\_is\\_human\\_trafficking](http://www.unodc.org/unodc/en/human-trafficking/faqs.html#What_is_human_trafficking).

19. [http://www.unodc.org/unodc/en/human-trafficking/faqs.html#What\\_types\\_of\\_industries\\_are\\_involved\\_with\\_human\\_trafficking](http://www.unodc.org/unodc/en/human-trafficking/faqs.html#What_types_of_industries_are_involved_with_human_trafficking).



According to UNODC (2014), trafficking in persons is a worldwide phenomenon. During the period from 2010 to 2012, at least 510 trafficking flows were detected, involving victims of 152 different citizenships in 124 countries across the world. More than 60 per cent of all victims of trafficking in persons are foreigners in the country where they are identified as victims, which implies that they have been trafficked across at least one national border, usually within the same region. »Domestic trafficking is also widely detected, and for one in three trafficking cases, the exploitation takes place in the victim's country of citizenship« (UNODC, 2014: 8).

Almost 49 per cent of all detected trafficked people were women, 21 per cent girls, 18 per cent men and 12 per cent boys, which implies there is a gender pattern in human trafficking. While women and girls comprise the vast majority of victims of trafficking in persons, men are in the majority among offenders. UNODC (2014) points out that 70 per cent of offenders are men. Women are the vast majority of the detected victims trafficked for sexual exploitation. In the case of forced labour, men are the majority but women still comprise one third of the detected victims. In the case of Asia, where trafficking for forced labour is the most widespread form of trafficking, women are the majority of victims.

Sexual exploitation is the most prevalent form of exploitation among detected trafficking victims (53 per cent of total cases), while forced labour is the form of exploitation that has increased the most, reaching 40 per cent in 2011.<sup>20</sup> There are some regional differences in these figures. While in Europe sexual exploitation counts for 66 per cent of the detected cases, in East and South Asia and the Pacific, labour exploitation counts for 64 per cent, with sexual exploitation falling to 26 per cent.

Trafficking in persons is the result of multiple factors that are located at different levels, that are interlinked, and that are rooted in economic policies that result in a lack of livelihood options in countries of origin as well as a lack of regulation of the global illicit economy. (Ham, 2013). The violation of women's rights is both a cause and a consequence of trafficking in women (Blokhus, 2008). Women and girls are particularly vulnerable to

trafficking due to their social and economic position, as well as their position in the migration process. Many women are trafficked as they attempt to migrate. **Feminization of migration** is therefore linked to trafficking trends and the feminization of trafficking. Restrictive migration laws and the corruption of migration officers often constitute a fertile ground to foster trafficking.

Poverty (and the **feminization of poverty**), unemployment, a cultural context where violence against women is tolerated, patriarchal systems including norms that limit women's autonomy, women's access to key resources (economic, social networks, information and knowledge), as well as the demand for cheap labour in feminized economic sectors are some of the causes of women's vulnerability to trafficking. The prevalent role of women as income providers for their homes, as a cheap labour force in global value chains, and as domestic workers in the context of society's unfair organization of care systems, complete a vicious circle of precarious livelihoods and economic profits.

At the same time, »trafficking can be regarded as a cause of human rights violations because the very act of trafficking constitutes a breach of, amongst others, the right to dignity and security, to move freely and to work in just and favourable conditions« (Blokhus, 2008: 13). **Violence against women**, is also a defining feature of trafficking in women.

It is important to highlight that the Palermo Protocol fosters the implementation of the 3P paradigm, which calls governments to **prosecute** trafficking cases, provide **protection** and services to victims and to take measures to **prevent** the crime from happening in the first place. While legislation in many countries has improved in order to provide a legal framework to protect female victims of trafficking, there are still limitations. Some countries do not have any legislation at all and others have partial legislation that covers only some victims or certain forms of exploitation. In fact, »more than two billion people lack the full protection of the Trafficking in Persons Protocol« (UNODC, 2014: 12). The situation is even more worrisome when it comes to the number of convictions for trafficking in persons. Most of the countries have less than ten convictions per year and almost 15 per cent have none at all. In brief, impunity prevails, showing the difficulties, and maybe the lack of will, of criminal justice systems.

20. According to UNODC (2009) because it is more frequently reported, sexual exploitation has become the most documented type of trafficking in aggregate statistics. In comparison, other forms of exploitation might be under-reported.

Based on a variety of evidence, it seems important to tackle the structural causes of this phenomenon with a more comprehensive approach. Jeffreys (2011) describes trafficking in women and girls within the sex industry.<sup>21</sup> She asserts that women are trafficked for all forms of the sex industry (brothels, street and escort prostitution, strip clubs, pornography, military prostitution and tourist prostitution). According to her the provision of trafficked women and girls who are forced to work in order to pay their debts to traffickers has currently become the most common way to supply the industry.<sup>22</sup>

Cacho (2011) extensively documented the trafficking of women and girls for sexual exploitation in Asia, Europe and Latin America. Trafficked persons' testimonies compiled in this work clearly reveal the complexity of the issue as well as the many layers of human rights violations to which women and girls are subjected. She also reveals the correlation between the poor living conditions in source regions, the existence of global crime organizations, the corruption of police officers, migration officials and political leaders, the economic profit derived from trafficked people and the opportunities to launder this money which the diverse mechanisms of illicit financial flows provide.

Therefore, to tackle the problem, it is necessary to reveal the business methods of criminal organizations and the commercial dimension of prostitution, and to understand that women, girls and boys are the merchandise on sale. For this, the focus should be shifted from the victims to the lawyers, accountants and owners of bars, massage houses, night clubs, casinos, hotels and maquilas that make trafficking possible (Cacho, 2011).

## B. Findings on Money Laundering, Corporations and Human Trafficking

Tracing the money involved is not necessarily made possible with the analysis, research and legal investigations

21. Jeffreys (2011: 3) defines this industry as the «ways in which traditional forms of organization of prostitution are being changed by economic and social forces to become large scale and concentrated, normalized and part of the mainstream corporate sphere».

22. There is an ongoing debate between the abolitionist and the regulatory approach to commercial sex. While it is not in the scope of the present article to enter that discussion, this debate does not put in question the fact that trafficking for sexual exploitation and violence against women and girls should be eradicated. Trafficking in human beings is criminal regardless of the reason for the trafficking and forced prostitution should be illegal just as any other type of forced labor.

carried out for human trafficking cases, which generally concentrate on tracking human trafficking, rather than the money.

Nevertheless, tracking the money has been one of the activities of financial intelligence units (FIUs) lately. Recent interviews conducted for this paper reveal that although most of the court cases relating to human trafficking in Argentina<sup>23</sup> originated from research conducted by the Prosecutor's office in charge of human trafficking and exploitation (PROTEX), more and more investigations are being initiated at the FIU. Based on reports of crimes linked to human trafficking as a precedent, the FIU analyses the money transfers information provided by the banks to screen people linked to trafficking. This has then been followed up by the Prosecutor's office in charge of Economic Crimes and Money Laundering (PROCELAC).

It should not be overlooked that in the cases of trafficking in persons for labour exploitation, such exploitation is the first link in a global value chain. It is initiated with the exploitation of persons for the production of goods that are then sold by corporations around the globe. Complex organizational structures are used for channeling the profits through entities located in secrecy jurisdictions, thereby contributing to capital flight and eroding the taxable base of the country where the economic activity took place.

In the cases of trafficking in persons for sexual exploitation, the network of businesses involved in the money laundering is sometimes quite far removed from the forced prostitution business itself. Such is the case, for instance, when real estate or even coffee shops are invested in using the profits of sexual exploitation and human trafficking businesses. In other cases, there is a network of related businesses involving casinos, pubs, nightclubs, and hotels.

### 1. Findings on Money Laundering in Human Trafficking Cases

Money laundering techniques used in human trafficking cases are similar to those found in other serious crimes.

23. The Argentine case as well as other national and regional examples is used in this paper only for the purpose of illustrating the problem.

The first phase of money laundering consists in the »placement« of illicit funds into the financial system by breaking large sums of money into smaller amounts, smuggling currency, changing currency, transporting cash or traveller cheques or through gambling. This is done using the following methods (FATF, 2011):

- parceling of wire transfers,
- transfers of small sums of money<sup>24</sup>,
- transfers from different regions to the specific persons in other countries,
- transfers to many different people,
- use of money service businesses,
- use of cash couriers, and money remitters,
- buying winning lottery tickets<sup>25</sup>,
- postal orders and cash payments.<sup>26</sup>

In Argentina, the proceeds of human trafficking have also been invested in foreign currency on the illicit market.<sup>27</sup> According to the findings with regard to money laundering and human trafficking cases in Argentina forced prostitution is paid via credit cards (payments for sex are disguised as charges for drinks in a night club) in some places. This is the case when prostitution is carried out in commercial places, such as coffee shops, pubs, night clubs or casinos.<sup>28</sup>

The second phase of money laundering consists of »layering« through fictitious sales and purchases, shell companies, wire transfers, splitting and merging of bank accounts or by using underground banking. The following money laundering methods have been found in human trafficking cases (while some methods in human trafficking cases are the same in most countries others are country-specific, but all share some common characteristics):<sup>29</sup>

- use of cash-intensive businesses,
- use of formal and informal banking systems<sup>30</sup>,
- use of local or offshore companies, trusts<sup>31</sup>, and shell companies<sup>32</sup>,
- commingling of funds with legitimate business proceeds,
- use of aliases, straw men, false documents,
- use of night clubs, restaurants<sup>33</sup>, convenience stores, taxi companies, hotels and casinos as front companies, or investments,
- use of import/export companies, transport companies, construction companies, tourist agencies<sup>34</sup> and sports clubs<sup>35</sup> for money laundering and shifting money,
- use of companies registered in different countries and bank accounts registered under such companies,
- use of the identity of the trafficked individuals to open bank accounts to gain access to credit through overdrafts, loans and credit/debit cards,
- forcing trafficked women to borrow money<sup>36</sup> in the formal and informal banking system.

In some cases it has been found that money is shifted to limited companies which are legally constituted, simulat-

24. In general, bank deposits or money transfers related to human trafficking are made in small amounts so that they will not be reported by banks to the FIU in each country.

25. FATF (2011: 31) describes the case of trafficking women from Eastern European countries for sexual exploitation in Spain in which of the investigated members of the organization had allegedly bought winning lottery tickets with cash to the real winners.

26. Found in a Colombian case (FATF, 2011), which also mentioned the use of credit card transfers or on-line payments for pornography (in which the main victims are children).

27. Information obtained from interviews conducted for this document (see section VII), and Valerdi (2015).

28. This information comes from the interviews held for this document (See section VII)

29. This list was created based on FATF (2011) and the information obtained in the interviews held for the purpose of this document (see section VII).

30. A case of Colombian people trafficked to Argentina to be exploited in a furniture manufacturing company was found to be related to an informal lending business. In this case, the Argentine prosecutors worked in collaboration with the Colombian government. See <http://www.lanacion.com.ar/1855967-los-carreteros-colombianos-victimas-de-la-trata-y-del-lavado-narco>.

31. As we learned from the interviews held for this paper (see section VII), trusts are chosen for laundering the proceeds of trafficking in humans because they can be used to hide the ultimate beneficial owner.

32. FATF (2011: 31) describes an investigation focused on a criminal group that operated in different areas of Spain, trafficking women from Eastern European countries. The group was detected by two different sources, the police investigation and the FIU information. The police investigation was focused on a group of people that were members of an organized criminal group linked to smuggling and trafficking women. The group was the owner of several »night clubs« in different cities of Spain where women were exploited. Part of the money obtained through that illegal activity was sent abroad through money remittance companies in order to pay the debt of each woman. Such remittances consisted of small amounts of money. During the police investigation it was detected that front companies were also created, some of them carried out no real activity.

33. The informality of the restaurant sector in developing countries allows for money laundering to take place rather easily there. Another business sector in which money laundering has been identified is in wine and other alcoholic beverages production (Valerdi, 2015: 60–62).

34. Information obtained from the interviews held for the purpose of this document (see section VII).

35. In the case of Marita Veron of Argentina, who was a victim of human trafficking for prostitution, one of the companies used for laundering the proceeds of the illicit activity was »Gerenciadora Deportiva del NOA«, the company managing the soccer club »Club Atlético San Martín de Tucumán«. See <http://www.fiscales.gob.ar/criminalidad-economica/tucuman-pidieron-que-casacion-procese-al-clan-ale-por-asociacion-illicita/>.

36. In addition to cases in which trafficked humans are indebted in order to force them to repay their debts by forced labour or prostitution.

ing the payment for services that are difficult to verify<sup>37</sup> (a method which is also seen in transfer pricing manipulation cases for tax evasion purposes within corporations). Such money movements make it difficult for local authorities to track the money and thereby create a distance between the crimes and illicit activities and the wealth they generate. In a money laundering scheme, this is also known as stratification or diversification of the illicit assets.

Finally, the third phase of money laundering consists of »integration«. This can take the form of buying luxury goods or real estate. The following methods have been found in cases involving trafficking in humans:

- investing in real estate, in cars, in boats and in off-shore entities.

## 2. Transfer Pricing Manipulation<sup>38</sup> and Human Trafficking

Trafficking in persons involves corporations in many cases. As is to be expected, this is evident in the case of trafficking for labour exploitation.

Several corporations have been denounced internationally for the exploitation of their workers, for child labour or for human trafficking. Among these are Nike<sup>39</sup>, Inditex<sup>40</sup>, Nestle<sup>41</sup>, ADM, and Cargill<sup>42</sup>.<sup>43</sup> In such cases, corporations are usually accused of turning a blind eye to the flouting of core labour standards or the use of child

labour, and are thus held indirectly responsible.<sup>44</sup> However, it should be noted that in many instances the sweat shops, workshops or farms where the exploitation takes place operate as exclusive producers<sup>45</sup> for such brands, which should indicate that there is a relationship between the brands and the exploitation of persons who have been victims of trafficking.<sup>46</sup>

Human trafficking has also been found in agriculture, and agricultural global wealth chains particularly affect developing countries. In Argentina, the outsourcing of activities that are outsourced over and over again later is one of the ways in which companies attempt to create a distance from the exploitation and trafficking in persons associated with the first bonds of the global wealth chains. This is particularly prevalent in the agricultural sector, and as revealed in the interviews held for this work (see section VI), in the yerba mate chain.<sup>47</sup>

Consequently, Base Erosion and Profit Shifting (BEPS) techniques that also serve the purpose of capital flight, such as transfer pricing manipulation, can also be said to be used for shifting the profits generated by trafficking in persons.<sup>48</sup>

37. Information obtained from the interviews held for the purpose of this document (see section VII).

38. In this paper it is understood that transfer mis-pricing is not the only problem relating to transfer pricing manipulation. Transfer pricing manipulation is thus understood as the use of intragroup transactions and global MNE's structures designed with the objective of shifting the profits of MNEs from the jurisdictions where the economic activities take place to the jurisdiction of the beneficial owners, using for that purpose zero and low tax jurisdictions and tax shelters as conduits and taking advantage of double taxation and other treaties in place—among other strategies. Such transfer pricing manipulation is facilitated by the globalized use of the arm's length criteria and the internal contradiction within this criteria when understanding transactions within an MNE as comparable to transactions within independent parties, and contracts within an economic group as if they had been agreed upon between parties with equal negotiating powers (see Avi-Yonah, 2007 and Corti, 2012).

39. See <http://www1.american.edu/ted/nike.htm>.

40. See <http://www.equaltimes.org/zara-uses-slave-labour-in?lang=en#Vt3Fs0Jmpz0>.

41. See <http://www.theguardian.com/sustainable-business/2016/feb/01/nestle-slavery-thailand-fighting-child-labour-lawsuit-ivory-coast>.

42. See <http://www.confectionerynews.com/Manufacturers/Nestle-Cargill-and-ADM-face-child-slavery-case>.

43. For a description of several international cases of labour exploitation by MNEs see Klein (2002).

44. It should be observed though that prosecutors find it very difficult to prove such a responsibility in a court of law. At least that has been the case in Argentina. In one documented case of human trafficking which resulted in a court ruling the companies involved in the production chain using a sweatshop were accused of being socially responsible for the human exploitation and human trafficking in the sweatshops with which they worked. Yet, they were ultimately cleared of any responsibility. (Case 3692/13 at the National Court in Crime and Correctional n° 4).

45. Some countries such as Argentina consider an economic linkage, for transfer pricing purposes, to exist when a party enjoys exclusivity as an agent, distributor or dealer for the purchase and sale of goods, services and rights of the other; a party provides the other with technological property or technical knowledge which forms the basis of the activities on which the latter conducts its business; and various other factors which prove the existence of economic collusion between two or more parties overall. (Argentina's AFIP's General Resolution 1122 of 2001).

46. It should be observed that as long as the responsibility of the brands and of big corporations is not recognized, the ones that end up being judged for trafficking in humans will always be the smallest players in the production chain.

47. In a case involving the current Ambassador of Argentina in Spain, former governor of the province of Misiones and former President of Argentina (for two days in 2001), Ramon Puerta, charges were made under which the trafficking of children and adults and the yerba mate drying and processing activities were considered to be one single economic unit. In this case, the trafficked persons were presumably deceived and taken under false promises to the yerba mate property of Ramon Puerta, where they were exploited. Ramon Puerta was also a partner in Yerbatera Misiones SRL, a company which dries and processes yerba mate and earns large profits from the exploitation of human beings. The prosecutor therefore considered the trafficking in humans to be related to decisions taken by the drying and processing company, Yerbatera Misiones SRL. The case has not yet had a court ruling at the time when this document was written.

48. For an analysis of transfer pricing manipulation see Grondona (2014 and 2015).

Some of the transfer pricing mechanisms which can be specifically related to human trafficking for labour exploitation are:<sup>49</sup>

*Contract manufacturing, toll manufacturing and purchasing services:*

Contract manufacturing structures (of which one the most well-known instances is maquilas, but it also includes sweatshops) are intended to limit the profits earned by local affiliates. Under such schemes, it is understood (and is formalized in a contract) that the affiliate assumes limited risks, functions and assets, and therefore is only entitled to a limited profit (for example, two per cent above total costs).

Contract manufacturing structures are found in all types of industries in which a part of the manufacturing activity can be stripped of its assets, risks and functions (e.g. textile, car, electronics, etc.). In this way, a local entity may produce under a contract from another entity located in a low or zero tax jurisdiction; obtaining for such production a limited profit. The entity in the low or zero tax jurisdictions (the intermediate entity) will thus obtain the goods at a low cost and retain the profits associated with their sale through another entity which will also receive a limited profit.<sup>50</sup>

It should also be noted that some jurisdictions provide safe-harbors for the location of sweatshops or maquilas, giving the corporations that locate themselves in such jurisdictions special benefits, such as no tax payments. Even when such benefits are only supposed to last for a limited amount of time, in practice they are extended indefinitely (Klein, 2002).

The abuse of these types of structures has motivated China and India to incorporate the concept of »Loca-

tion Specific Advantages« (LSA), under which it is argued that some investments by corporations in China or India are more profitable than in other countries as a result of specific location advantages such as a comparatively low-cost workforce, among other advantages (UN, 2013). In this way, such countries attempt to seize part of the income tax evasion achieved by the exploitation of low-cost manufacturing in which the intangible value associated to know-how or brand—conveniently located in tax havens—is later added to sell a product at a much higher price. China and India would tackle such tax avoidance either by not allowing for certain deductions on royalties, or attempting to tax a portion of the global profits obtained thanks to the LSA.

To separate themselves from the exploitation of humans in sweatshops, corporations create intermediate entities which, instead of being related to the manufacturing activity themselves are characterized as providing purchasing services for other affiliates of the transnational corporation. Manufacturers are said to be non-related entities, although they perform manufacturing activities exclusively for the client as is the case of corporations in the textile industry. Such »purchasing services entities« charge the group entities a fee in relation to this service provision and act as intermediaries between the entities performing the manufacturing activity and the group entities acquiring such goods for distribution.

*Commodity<sup>51</sup> triangulation, under-invoicing of exports<sup>52</sup>, over-invoicing of imports:*

The strategy of under-invoicing exports and over-invoicing imports can also include the participation of an entity located in a third country. The third country acts as a place for intermediation between related companies leading to trade triangulation. For instance, agricultural, oil, or mining companies export their products through intermediaries (traders) located in low or zero tax jurisdictions such as Uruguay, Panama, Mauritius Islands, Switzerland, The Netherlands, Delaware, etc. at a minimum price—export under-invoicing—while the

49. Other transfer pricing mechanisms which have not been linked to human trafficking in this paper but could however be used in combination with the described mechanisms are: provision of logistical services from abroad, commission agents; sales activities from offshore entities; centralization of management and low value added services in offshore entities; locating intangible assets in offshore entities; and intragroup loans and other financial instruments.

50. The sale of the products would be performed from the intermediate jurisdiction to the customer located in a third country. Thus, this transfer pricing structure is also included in what is generally referred to as 'triangulations' where the goods move from country A to country B, but the invoice goes through an intermediate entity located in a low or zero tax jurisdiction.

51. Here we refer to commodity and not trade triangulation, because other aspects relating to trade triangulation were discussed in the previous bullet-point; but also because human trafficking for labour exploitation is particularly relevant in the agricultural sector.

52. On an analysis of mispricing in Argentine soybean exports, see Grondona and Burgos (2015 and 2016).

merchandise is shipped directly to the purchaser's destination. The purchaser is invoiced by the entity located in the intermediary jurisdictions at a price several times higher and the profit is retained by the intermediary.<sup>53</sup>

This export under-invoicing is combined with the activities of offshore commissioners that may charge between five and ten per cent of the export value. Even when in some cases such commissioners are not related parties, they can be used for the purpose of base erosion, profit shifting and capital flight. Argibay Molina (2013: 78–82) describes several alternatives. One of them would be for the exporter and the importer to agree on a final price including all expenses. However, the payment would not be entirely made to the jurisdiction of the exporter, but a percentage of it would be paid to an entity located in an intermediary jurisdiction upon request of the exporter. If the entity and account located in the intermediary jurisdiction is not declared as related to the exporter, then the tax authority may not understand this transaction as a risky one.

It needs to be observed that these corporate structures are possible due to the global acceptance of the separate entity criteria, which allows for the localization of contracts in entities in tax havens for tax minimization purposes or wealth creation, and facilitate the artificial separation between economic activity and profit.

### 3. Estimates on Human Trafficking Profits and IFF

Different trafficking operations have one key element in common: profit-making through the exploitation of the victims. With a few exceptions such as child soldiers, removal of body parts for rituals and some other forms of exploitation that comprise a small share of the total number of victims) the vast majority of trafficking is aimed at obtaining economic benefit from the labour and services extorted from the victims (UNODC, 2014: 46).

Several estimates have been produced in relation to the profits generated by human trafficking.

The International Labour Office (ILO, 2005) states that about 2.45 million men, women and children are victims

of trafficking at any point in time; and that the total illicit profits<sup>54</sup> of all forced labour resulting from human trafficking is estimated to be about 32 billion US dollars per year.<sup>55</sup>

Considering that the total profits coming from illicit trades (including drugs, people, arms, fake goods and stolen natural resources) are estimated by the UNODC at 130 billion US dollars, the estimated profits of human trafficking represent a significant proportion of that total (FATF, 2011: 16). The proceeds of trafficking in persons and exploitation are not registered in national estimations of the gross domestic product partly because they are not considered to generate an added value due to their illegal nature (Valerdi, 2015: 15) but also because of the difficulty of obtaining such data which is hidden in other figures. Once the proceeds of such crimes are re-introduced into the legal system (after being »laundered«), it is very difficult to distinguish the economic activities that have criminal activities as an origin from those that are legal. Therefore, figures shown in relation to human trafficking are not definite, but only very modest approximations to measuring the problem.

Estimations relating to IFF do not normally capture human trafficking.<sup>56</sup> However, organizations estimating illicit financial flows, such as GFI (Haken, 2011), use ILO (2005) estimates for the proceeds of human trafficking (32 billion US dollars) in their estimates of the value of illicit international trade which is calculated at a total of 650 billion US dollars, approximately. This includes drug trafficking, human trafficking, illicit wildlife trade, illicit trade of human organs, illicit trade of small arms and weapons, illicit trade of diamonds and colored gem-

54. Value-added usually represents the sum of profits and wages. In the case of forced labour, however, most value-added goes as profits into the pockets of traffickers and employers (ILO, 2005).

55. The estimate follows the methodology described by the OECD to calculate profits from prostitution in general: estimate average turnover (i.e. number of clients multiplied by the price paid by each client) and subtract intermediate consumption expenditures. The 32 billion US dollars also include profits made from trafficked victims in other forms of forced economic exploitation. Since there is no way to know the exact profit generated by each forced labourer, ILO used as a proxy the data on average value-added per worker in agriculture from the World Bank's World Development Indicators 2004, considering that trafficked forced labourers typically work in low-tech labour-intensive sectors. It should also be mentioned, that ILO considers this estimation to be very modest, because both the global estimate of the number of victims and the estimated profits per person are a minimum and are lower than those provided by some other informed sources. (ILO, 2005).

56. See Kar and Le Blanc (2013), Gaggero, Rua, Gaggero (2013), Henry (2012), Ritter (2015).

53. For an analysis of commercial transactions using Switzerland as an intermediary, see Cobham, Janský and Prats (2014).

stones, illicit oil trade, illicit timber trade, illicit fish trade, illicit trade of art and cultural property, illicit gold trade, and fake goods.

Also, estimates relating to the impact of transfer pricing manipulation could in some way reflect what has not been registered as income in the jurisdiction where the exploitation took place.<sup>57</sup>

### C. A Global Network of Facilitators and Secrecy Jurisdiction that Can Serve as a Den for Human Trafficking

Facilitators or enablers can be defined as «(...) firms that provide services for transferring funds to tax havens (or to countries with preferential systems in place), and without the existence of which capital flight could not take place in many cases. This concept encompasses the whole gamut of professionals that are involved throughout the cycle of this kind of operations.» (Rua, 2014)

The professional assistance of lawyers, accountants, and banks, making the re-introduction of the profits of preceding crimes into the legal financial market possible, is widespread in cases of trafficking in persons.

Enablers play an essential role. The bigger the network for trafficking in persons, the more sophisticated the enablers supporting them.

Those traffickers who operate in an organized group may be able to traffic more victims and to operate in different countries in a coordinated manner. A greater level of organization may enable the exploitation of more victims and thus making higher revenues possible. Transnational organized crime activity requires connections with other groups, significant investments for travel and border crossing, and the overall coordination and distribution of labour (UNODC, 2014: 43–44).

Thus, the role of enablers not only limits itself to the writing of contracts, the design of the global value chain, the registration of the companies or the protection of the beneficial owners but on occasion it is even

necessary for the actual trafficking of persons. In a case in Argentina of girls who were introduced into the country as refugees, enablers had been used for the paperwork involved at the initial stage.<sup>58</sup>

In another case in Argentina, accountants and lawyers were used for laundering the money of the sexual exploitation of trafficked women via the payments allegedly made to them as compensations for dismissal. This case also involved trusts, health companies and a coffee shop for money laundering at the end of the wealth chain. Notaries involved were investigated regarding their role in facilitating the constitution of societies for the purpose of hiding the ultimate beneficiaries and laundering the proceeds of the crime.

However, it should be mentioned that the variety of facilitators related to human trafficking can actually be more extensive and complex. Trafficking of humans often involves judges, police departments, migration officials and local government authorities.

The perpetrators and their levels of organization vary from one individual managing to traffic one victim, to large-scale networks that are able to move many victims from one continent to another, and to exploit them for years (UNODC, 2014: 45).

However, in most of the cases of trafficking in persons that have reached the Argentinian courts, the networks that were identified have been precarious. This may be a problem caused by the way in which these crimes are tackled by the legal system—which tends to focus on the most vulnerable sectors—rather than a true reflection of the size and complexity of the human trafficking problem<sup>59</sup> (INECIP y UFASE, 2012: 46).

FATF (2011) mentions the relationship between human trafficking and offshore companies. In particular, it presents a case of an investigation regarding the financial affairs of a prominent brothel owner who was linked to human trafficking. In this case the victims were traf-

57. Grondona and Burgos (2015 and 2016) estimated that the effect of transfer pricing mechanisms in Argentine soybean exports had produced, on average, a ten per cent under-invoicing in the exports of soybean and related products between 2010 and 2013.

58. An intermediary in the operation charged the women arriving in Argentina money to advise them on how to make a presentation to the Refugees Selection Committee of the National Migrations Direction with the objective of initiating the paper work with false details. (this information was obtained from the interviews held for the purpose of this document, see section VII).

59. Findings on assets were for some time excluded from the legal investigations (INECIP y UFASE, 2012: 48).

ficked from Ukraine, Romania and Bulgaria to work in a strip club that was used as a front for a brothel (p. 54) and where evidence was found of off-shore investments (i.e. an anonymous investment set up under the front of a trust in Guernsey). The accused also operated two bank accounts in the USA and the funds from the USA were also transferred to the Guernsey Trust. The accused later transferred funds from Guernsey to South Africa to set up two new enterprises.

It should be noted that 2015's Financial Secrecy Index (FSI), developed by the Tax Justice Network (TJN), places Guernsey on the 17th spot in the global ranking due to various secrecy aspects, one of them being that Guernsey does not maintain company ownership details in its official records.

TJN's FSI ranks jurisdictions according to their level of secrecy and the scale of their offshore financial activities. This is done in order to understand global financial secrecy, tax havens or secrecy jurisdictions, and illicit financial flows or capital flight. Global banks and law and accounting firms design global structures using secrecy jurisdictions abroad for their tax- and law-dodging clients. Thus, secrecy jurisdictions provide secrecy for tax evaders, corruption and criminals.<sup>60</sup>

The recent »Panama Papers«<sup>61</sup> leak of information on companies and structures in financial secrecy jurisdictions which were created by the law firm Mossack Fonseca for financial secrecy and tax avoidance purposes is a reminder of the size of the problem created by such jurisdictions.

As described by Rua (2014), the attractiveness of financial secrecy jurisdictions (also known as tax havens, or opaque jurisdictions) is due to their beneficial tax regime, few and flexible requirements for the constitution of entities, lack of regulation of financial instruments and legal structures and the protection provided by fiscal and banking secrecy which hide the true beneficiaries of the entities, their accounts and their financial investments.

Rua (2014) also exposed the relationship between the international banking system and secrecy jurisdictions in relation to the 4 040 HSBC Swiss bank accounts that

had not been declared in Argentina. The role of banks as facilitators was once again exposed by the Panama Papers with the HSBC among the top 10 banks that have applied for offshore entities on behalf of their clients.

Even though the financial secrecy jurisdictions have been implicated in very few human trafficking cases this may be due to the fact that there are very few cases where a court ruling is reached and that they seem to generally represent the smallest links in the human trafficking chains.

#### IV. Final Reflexions and Recommendations

Illicit financial flows are a relevant feature in the current stage of capitalism. Both due to tax evasion, avoidance and dodging, as well as to money laundering derived from criminal activities, the estimated figures of these financial flows are striking.

In this article we highlighted the interlinkages between illicit financial flows and gender justice. We summed up the implications of the loss of tax revenue in terms of tax structure and the lack of ability to fund adequate public policies aimed at reducing gender gaps and fulfilling women's human rights.

We also focused on trafficking in persons as one type of criminal activity that contributes huge resources to illicit financial flows. Trafficking in persons is both a consequence and a cause of women's rights violation. The lack of resources to implement proper public policies which would guarantee access to basic living standards is one of the roots of women's vulnerability to human trafficking networks, as well as to labor and sexual exploitation.

Trafficking in persons and the associated exploitative activities represent extreme manifestations of women's rights violation. Facing this severe injustice requires political will and practical action. Profits of women's trafficking are benefited by the diverse mechanisms that allow for illicit financial flows, and the difficulties that are still encountered when attempting to link human trafficking with its money trace. Combatting these mechanisms would be a reasonable step forward. For this the following recommendations, both at national and global level, might be taken into account.

60. See <http://www.financialsecrecyindex.com/introduction/introducing-the-fsi>.

61. See <https://panamapapers.icij.org/>.





	Global level	National level
<b>Norm-setting</b>	<p>Review all global tax and financial policies, treaties and agreements with regard to their compliance with human rights, gender equality, labour and anti-money-laundering standards.</p> <p>Promote global standards and tax treaties that apply the source principle of taxation instead of residence principle.</p> <p>Implement automatic exchange of information with public and global access.<sup>62</sup></p> <p>Develop an internationally legally binding instrument to regulate the compliance of multinational enterprises to human rights, gender equality, labour and anti-money-laundering standards.</p> <p>Agree on an international standard to sanction global enablers/facilitators of tax abuse and human trafficking with a special focus on banks, secrecy jurisdictions, shell companies, legal advisors and law firms and corrupt government authorities.</p> <p>Reconsider the validity of the arm's length principle and intragroup contracts against the economic reality principle.</p> <p>Establish international standards to protect witnesses, whistle-blowers, tax and human right defenders who expose tax abuse and report corruption.</p> <p>Put in place and harmonize legal frameworks to fully implement the Palermo Protocol and to protect the rights of migrants, and trafficked people, especially women.</p>	<p>Enlarge political space to implement progressive taxation on income and wealth, while avoiding explicit and implicit gender bias in taxation. Review harmful tax incentives, exemptions and subsidies, especially those provided to corporations.</p> <p>Enlarge policy space to curtail illicit financial flows by implementing financial regulations, macro prudential measures such as capital control techniques, and eliminate investor-state dispute settlement clauses to ensure that the right of states to regulate and tackle illicit financial flows is protected.</p> <p>Adopt country-by-country mandatory reporting of sales, profits, assets, taxes and labour standards for all corporations.</p> <p>Promote legal reforms considering and avoiding cross-border spillover effects of national tax policies and control transfer pricing manipulation and money laundering techniques.</p>
<b>Institutional framework</b>	<p>To establish a UN intergovernmental tax body with universal membership and equal voting rights, which is adequately resourced, providing it with gender expertise and mandating it to review national, regional and global tax policy according to gender equality and human rights obligations.</p> <p>Promote international and regional mechanisms to move from tax competition to tax cooperation.</p>	<p>Strengthen the mandate and resources of tax authorities and prevent rotating doors between private and public sectors which lead to corruption and an internal lobby of the very wealthy and corporations.</p> <p>Establish systematic coordination mechanisms between finance intelligence units, tax authorities, Central Banks, customs, women machineries and human trafficking prosecutors in order to eliminate illicit financial flows, human trafficking and gender based discrimination.<sup>63</sup></p>

62. Figueroa (2005) understands that the only system consistent with an honest allocation of profits where economic activity takes place, which takes into account the role of developing countries in such income generation, is one in which tax treaties are based on the source principle, and not the residence principle. The residence principle has been pushed for some time by developed countries because it favors the countries of origin of the capital, rather than that of destination. Developing countries will risk losing more and more of their tax base to low and zero tax jurisdictions, but also to developed countries, affecting global inequality as well as gender inequality, if the role of source-residence taxation is not considered when addressing international tax reforms.

63. In this respect, OECD's Tax and Crime programme has issued recommendations for improving the co-operation between Tax and Anti-Money Laundering Authorities. However useful, it does not address the specific problem of human trafficking. In this same order of ideas, In November 2014 a unit was created (Decree 2103/2014) in the Argentinian President's office to monitor foreign trade involving the representatives from the Ministry of Economics and Finance, the Tax Authorities, the Central Bank of the Argentine Republic («BCRA»), the stock exchange's national supervision commission («CNV»), the national insurance supervision office, the Financial Information Unit («UIF») and the Attorney General's office on Economic Crimes and Money Laundering («PROCELAC»). The progress of this unit has been slow. But in any case, it does not refer at all to the specific problem of human trafficking.



	<b>Global level</b>	<b>National level</b>
<b>Capacity building</b>	Design and implement capacity building programs as part of the principle of international cooperation and assistance in tax matters; including by untied, additional and predictable official development assistance and also by South-South cooperation.	States need independent, well-equipped, trained and properly paid officers responsible for combating corruption and tax evasion, handling requests for mutual legal assistance and a properly functioning independent judicial system to combat illicit financial funds. (A/HRC/28/60, 2015, Para 32)
<b>Data, evaluation and accountability</b>	<p>Design and harmonize comprehensive cross-border methodologies to collect and analyze comparable data on tax evasion, avoidance, gender biases of tax structures and links between human trafficking and IFFs.</p> <p>Conduct multi-jurisdictional research and investigations on cross-border spillover effects of tax policies and ex ante and periodic studies on global tax evasion and avoidance and its gender equality impacts.</p> <p>Ensure public access to financial, fiscal, beneficial ownership and HR assessment data.</p>	<p>Design comprehensive methodologies to collect and analyze data on tax evasion, tax avoidance, gender biases of tax structures, links between human trafficking and IFFs and cross border spillover effects of national tax policies.</p> <p>Promote joint data collection and analysis between Tax authorities, National Statistics Offices and Women machineries.</p> <p>Conduct mandatory ex ante and periodic human rights and gender equality impact assessment of all trade, investment and tax agreements and policies.</p> <p>Conduct research connecting money laundering techniques to human trafficking, linking crimes that generate the assets (i.e. human trafficking) with money laundering of the assets.</p> <p>Ensure public access to financial, fiscal, beneficial ownership and HR assessment data.</p>



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## C. Interviews Held

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