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Tax Injustice and Corruption? The adverse effects that tax evasion and tax avoidance exert on human rights

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Table of Contents

1. Abstract

This paper analyses the consequences of tax corruption on human rights. The study explores and illuminates how fiscal corruption; tax evasion and tax avoidance, undermine the state's ability and capacity to promote, protect and enforce the enjoyment of human rights and can lead to the violation of fundamental human rights. It aims to develop a victim-oriented approach that connects tax evasion, as a form of corruption, to violations of people's rights. We focus on three case studies - the Fresenius model, the Panama Papers, and the Danske Money Laundry Scandal - that are related to the misuse of power in the European banking sector, in order to illuminate the interconnections between fiscal corruption and human rights violations and the possible liabilities of states if they fail to ensure the full realisation and enjoyment of the citizens' human rights.

2. Introduction

"Corruption is a human rights issue, which ought to be recognized as such by States, the business community and civil society. Those who peacefully work for the rights of others against corruption should be recognized, celebrated and protected as human rights defenders."

Mary Lawlor, Report of the UN Special Rapporteur on the situation of human rights defenders, 2022.

Since the 1990s it has been recognized by the international community that corruption needs to be reduced due to its detrimental effect on human well-being. The identification of corruption as a global phenomenon that hinders a country's economic growth and social development by higher inflation rates or reduced direct foreign investments also uncovered a strong connection to the realisation, protection, and violation of human rights (Stohl and Brysk 2020; Marx et al. 2022; Rose 2022). However, the link between human rights violations and corruption, particular with a specific focus on tax corruption, remains largely under-studied, despite recent efforts to highlight the connections and their effects on societies (Casanova 2008; D'Arcy 2011; Alston and Reisch 2019; Cheeseman and Peiffer 2020; OECD 2021; Banerjee et al. 2022). Therefore, corruption and its effect on human rights need deeper analysis and appraisal of their internal accelerating relational dynamics.

The shift from an economic to a human rights perspective on corruption also includes a shift from perceiving corruption as being a misappropriation of wealth and distortion of expenditure "(...) to viewing corruption and the tolerance of corruption by states as also being a breach of fundamental rights (...)" (Pearson 2001: 46). Yet, the assessment of whether and how corrupt acts violate human rights has to take place carefully and is context-specific. Even though all forms of corruption can have a short or long-term impact on human rights, it is important to note that not all forms of corruption automatically violate human rights - (ICHRP International Council on Human Rights Policy 2010; Boersma 2012; Davis 2019).

From a European perspective, the interconnections between corruption and human rights have not been extensively studied, compared to the global south, where the micro-practices of corruption within state institutions, notably within police and courts, have been closely associated with violence, and political corruption has been characterised by embezzlement and stealing of public funds. However, in this paper, we concentrate on fiscal corruption in the area of taxation with a special focus on tax evasion and tax avoidance, and their implication for human rights, through a critical look at transfer pricing and money-laundering in the private sector.

Tax avoidance is characterised as the legal use of tax laws to reduce one's tax burden. Although the arrangement could be strictly legal, it is usually in contrast with the intent of the law it purports to follow. Tax evasion can be defined as the illegal activity in which a person or entity deliberately avoids paying a true tax liability i.e., the taxpayer pays less tax than he/she is legally obligated to pay by hiding income or information from the tax authorities (OECD 2022).[1]

[1] For a select bibliography on tax crimes see the Corporate Crime Observatory "Tax Crime - Select Bibliography." Available at: https://www.corporatecrime.co.uk/tax-crime-bibliography

Taxation and the ability of the state to tax citizens and business is important for the functioning of the State. Taxation is the key public income to provide quality basic services and ensure rights. Still, there are different jurisdictions in every country and specific tax administrations are vulnerable to different forms of corruption. In particular, the complexity of tax laws, the discretionary powers of tax officials, and the low cost of punishment create many loopholes for corrupt practises (Goerke 2006; Bridi 2010; Marjit et al. 2017).

They can range from the everyday facilitative corruption, involving bribes to low-level officials to avoid import duties or detection of other similar illegalities - over administrative and bureaucratic corruption, characterised by illicit practices to lower taxation of businesses and income - to political corruption, unduly appropriating, using or circumventing state resources; tax revenues and systems, to serve the interest of a small group of elites; political actors and businesspeople. The LuxLeaks, Panama, and Paradise papers illuminated the key role of investment companies and asset managers in the managing of tax systems and the financial transborder transactions.

Fiscal corruption inhibits the state's responsibility and ability to promote, protect and enforce the enjoyment of human rights. It furthermore limits the state's capacity to provide for its citizens through social spending and undermines the quality of basic public services (e.g., water, electricity, housing, health, education). For example, the rights to food, water, education, health, and the ability to seek justice can be violated if a bribe is required to gain access to basic services. On one hand, tax revenue is essential for the state to live up to its obligations and, on the other hand, corruption prevents the state from promoting, protecting, and enforcing human rights (IMF 2022). Furthermore, the negative consequences of fiscal corruption are long-term, since large amounts of taxable revenues are unaccounted for and voluntary compliance with tax laws and regulations is reduced. Thus, the distributive function of tax collecting itself is undermined (Bridi 2010). As such, corrupt practices can harm the trust in government and lead to social, economic, and political instability.

In this article, we analyse the consequences of tax corruption on human rights and aim to develop an approach that illustrates how tax evasion, as a form of corruption, is related to violations of people's rights. Yet, we do not attempt to establish a causal relationship between tax evasion and violation of specific rights but rather illustrate how we can approach fiscal corruption as a human rights violation. We argue that fiscal corruption undermines the state's ability and capacity to promote, protect and enforce the enjoyment of human rights and can lead to the violation of fundamental human rights. It follows that we need a victim-oriented approach to explore and illuminate how fiscal corruption; tax evasion and money laundering, affect states' ability and capacity to ensure the rights of their citizens. We focus on three case studies (the Fresenius model, the Panama Papers, and the Danske Money Laundry Scandal) that are related to the misuse of power in the European banking sector.

The first case - the Fresenius model - demonstrates how companies avoid tax paying and profit shifting, and transfer pricing are systematically misused by multinational companies and limit governments' revenues for essential public services including healthcare, education, or environmental measures. The Panama Papers which revealed financial information for more than 200,000 offshore entities is the second case and the Danske Bank Money Laundry Scandal takes the point of departure as the biggest money-laundering scandal in the European banking sector.

3. Theoretical Background

3.1 How to define corruption?

There is no universally comprehensive accepted definition of corruption. Corruption does not have a legal definition in international treaties because it is not a technical term, and it is not regarded as a criminal offence in most criminal laws around the world (Peters 2015). For instance, the United Nations Convention against Corruption does not define corruption but lists specific types of acts of corruption that can be related to specific offences or groups of offences. This includes such categories as bribery, embezzlement, facilitation payment (paying money to speed the delivery of services), fraud, collusion, extortion, as well as patronage, clientelism, and nepotism. Many specific forms of corruption are clearly defined and understood but attempts to develop a general and all-encompassing definition invariably encounter legal, criminological, and, in many countries, political problems (Sampford et al. 2006).

Still, despite the definition's limitations, corruption is generally considered as the abuse of entrusted power for private gain (Transparency International 2022) and can be applied broadly because it is not clear what is corrupt and what is not corrupt in the rapidly changing societies (Johnston 2005).

The practical definition of corruption tends to be broad at the beginning and becomes more specific in order to measure different types of corruption. For instance, a distinction between grand corruption and petty corruption generally exists in contemporary analysis. Grand corruption means the corruption of heads of states, ministers, and heads of officials and it involves a greater amount of assets. In contrast to that, petty corruption or "low" and "street" corruption is the type of corruption that people encounter with public officials when they use public services, such as hospitals, schools, police, tax, etc. Another distinction is between need and greed corruption which suggests that citizens are more likely to engage in the fight against corruption when corruption is needed to gain access to "fair" treatment (need corruption) as opposed to special illicit advantages (greed corruption) (Bauhr 2017).

The United Nations Convention Against Corruption ("UNCAC") provides in its Preamble that, "Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish". In Chapter 3 of UNCAC, it stipulates some forms of corruption, where public officials misuse their power to obtain private gains, like bribery of foreign public officials and officials of public international institutions or organizations, embezzlement, misappropriation, or another diversion of property by a public official, trading in influence, abuse of functions, and illicit enrichment. In short, corruption is a phenomenon with wide-ranging consequences, facilitating and institutionalizing human rights violations , and the pervasive and malign nature enormously impacts the daily lives of billions of people (United Nations 2018). It undermines the quality of political institutions, limits the development and implementation of human rights frameworks and hinders the protection of important citizen's rights by the state e.g. right to health, right to life, right to housing etc.

According to the Human Rights Committee, it is 'difficult to find a human right that could not be violated by corruption', disproportionately aggravating and compounding existing societal and global disadvantages and inequalities. Human rights violations can even advance and sustain corruption, such as the right to a fair trial. For example, when public officials delay court proceedings, in order to avoid accountability for obtaining personal advantages through their position within the state, at the expense of the people they should be serving (Gathi 2017). Furthermore, the negative consequences of corruption on the safety and security of the citizens, further enhances the risks of human rights violations – for both war and criminality reasons, and propels corruption which implies that the risks of human rights violations are even further enhanced.

However, corruption and human rights are complex phenomena arising in a multitude of forms that inextricably link politics, governance, and legality, in complicated ways, with intricate implications for individuals and societies. As a legal phenomenon, they are shaped by political interests and contested in social reality (Estrich 1998). Although there is a mounting consensus among policymakers and scholars that corruption erodes popular trust in political institutions, undermines generalised trust in others and distorts political participation (Della Porta and Vannucci 2012), our knowledge of corrupt practises in many sectors is wanting (Heywood 2015; Philp 2015). Yet, this has not discouraged academics and policy institutions from developing their own definitions which are the subject of numerous legal or academic debates and disputes (e.g Alatas 1990; Heywood 1997; Jain 2001; Philp 2015; Transparency International 2022; World Bank 2022). However, corruption is inherently about the operation of the state, not disregarding the private sector links, while recognizing that the norms regulating behavior and public interest of the two differ. 'Bribing a police man or judge is of different significance than bribing an employee of a private organization' (Kurer 2015: 32). The effects on the interests of the public differ and they involve different political processes.

In conventional analysis, corruption is explored as legal transgressions and institutional deficiencies (Klitgaard et. al. 2000; Rose-Ackerman and Palifka 2016), where corruption constitutes a transgression of the market and the functioning of the state, institutionalised as 'bad' governance (Andersen 2018). In this approach, political corruption which unfolds as corruption–rights violations linkages are generally underemphasized (Johnston 2005: 19–21).[2]

According to Heywood, we have ended up with two conundrums in research; that most analysis of corruption takes nation-states as their principal unit of assessment and corruption is predominantly seen as a public-sector issue (Heywood 2015: 2), and that our understanding is limited by the data we have and the conceptual approaches we take (Heywood 2015: 11).

In similar ways, corruption in the most widely used understanding is molded on a particular conception of the state and political order as a sense of unity and cohesiveness, harmed or destroyed by the malign influences (Philp 2015: 20). The challenge is to "extend the focus of concerns about cultural differences and the importance of local understandings from a concentration on what behaviour people classify as corrupt, to identify the framework in which they make these judgements", how they

[2] For an in-depth discussion on institutional corruption see the VIRTEU Roundtable Discussion Series, which focused on "Institutional Corruption and Avoidance of Taxation." Available at https://www.corporatecrime.co.uk/virteu-institutional-corruption.

understand “the political system and its operation and how far they have a sense of the political as a sphere in which conflicts could be resolved in ways that can be widely legitimated” (Philp 2015: 20), in order to grasp what is motivating people to do as they do (Philp 2015: 24). Hence, what we need is “a fine-grained analysis of the exact form that corrupt relations take in any given state is necessary if we are to think constructively about how we might explain and address the problem” (Philp 2015: 27).

Thus, it is important to pay attention to how different forms of authority use their power and position in relation to corruption. Olivier de Sardan (1999) argues that corruption should be investigated from the viewpoint of the actors, and not from a normative, conventional viewpoint, and we should explore how corrupt practises are rendered legitimate or illegitimate in context. He suggests that corruption is not one practice but rather a complex set of practises that, to different degrees and in different situations, can be deemed legitimate or illegitimate. As such, corruption is a multifarious and contextual phenomenon, defined and contested by localised moral and legal indexes and registers. It impacts practices of politics, state governance and administrative operative procedures across a variety of state-citizen encounters.[3] Consequently, the lines between what is legal and illegal, right and wrong, good and bad are blurred and contested to the extent that it questions the dichotomies we find in conventions, legal frameworks and conventional analysis (Jensen and Andersen 2017).

3.2 Corruption and human rights violations

In order to clarify and illustrate how (fiscal) corruption violates or can lead to the violation of human rights, several approaches exist (Figueiredo 2017; Rose 2021). The common approach to analyse corrupt practices that violate human rights is the classical human rights framework. It is an attempt to highlight different dimensions between corruption and human rights violations and their specific connections. It often focuses on the impact on victims and the extent of (somatic, mental and social) sufferings. Usually, these approaches seek to provide an in-depth investigation of countries that are characterised by high levels of corruption.

Several reports have indicated that countries with high levels of corruption (based on the perception of corruption indexes) usually have high levels of human rights violations (Report of the Special Rapporteur on Torture 2019 , Peters 2019). It is concluded that a lack of human rights violations is negatively correlated with corruption levels. This implies that an increase in human rights protection might be a mechanism hindering the occurrence of corruption - in this case fiscal corruption.

Although there are large variations in levels of corruption, it exists in every society, in every sector and legal entity. In all forms, it is detrimental to a society’s economic, social, political, and environmental development and undercuts trust, governance, and democratic cultures (Uslaner 2008, 2010; Johnston 2005; Heywood 2015). Corruption can be a crucial feature in the lack of will or capacity of states to deliver on their human rights obligations and provide fairly and equitably for their citizens in keeping with their duty of progressive realization of social, economic, and cultural human rights.

[3] For instance, from the VIRTEU National Workshop, which focused on Bulgaria, it emerged that, in Bulgaria, the elite may use its power and wealth to unfairly distort the tax administration's activities in two ways: on the one hand, to avoid tax inspectors' controls on the aligned firms; and, on the other, to let the tax administration focus their investigative efforts on competitors so to cause trouble for their business operations (Tsankov 2021).

Corruption can cause and reinforce social unrest, rebellion, and revolution and provide a conducive environment for societal transformations.

Furthermore, in environments characterised by low wages, limited state resources, and public services, proceeds and benefits from corruption can become necessary for citizens to provide for themselves and their dependents or the institutions within which they work. Corrupt practices perpetrated by energy companies in developing countries are emblematic of such a phenomenon (Grasso 2020). Further, corruption can involve the coercion or exploitation of citizens for personal ends or on behalf of political and economic interests. It involves the use of wealth and power, to exert influence through the exchange of valued resources such as money, access, expertise, etc. In its impact, corruption "benefits the few at the expense of the many" (Johnston 2005: 1).

In contrast, human rights include a wide range of rights that are divided in a non-hierarchical order into civil and political rights and economic, social, and cultural rights (Universal Declaration of Human Rights 1948; United Nations 2022). The foundation of human rights laws lies in several international legal instruments, in particular in the Universal Declaration of Human Rights (UDHR), which is the cornerstone of the human rights system. These legal instruments have integrated basic human rights principles, which aim to establish the standards of human rights.

The first principle is the universality of human rights which presents the essence of human rights as it was set out in the UDHR in 1948 and later in other prominent international human rights treaties. The Vienna World Conference on Human Rights in 1993 provided that states have the duty to guarantee and protect all human rights regardless of their political, economic and social system.

The second principle is participation which includes that people have the right to decide regarding the protection of their rights. As a result, governments have to engage and support people in their participation in civil and social matters.

The third principle is the indivisibility of human rights. Civil rights, political rights, social, and cultural rights are all collective rights. This implies that the improvement of one right will lead to the improvement of the others, as well as the deficiency of one right will affect negatively the other rights.

The fourth principle of human rights is non-discrimination which is considered a cross-cutting principle and is provided in all human rights conventions and applies to all people and it prohibits discrimination based on sex, race, colour, and religion.

The fifth principle is accountability which is one of the reasons why some states and state actors can be brought to international courts. Governments have the duty to create instruments to enforce human rights and integrate them into their domestic laws. They are responsible to establish effective measures to be used so that the government can be accountable when human rights are breached.

The last principle is transparency which includes that states' governments must allow the people to know and understand how their decisions can affect human rights and how public institutions, such as schools and hospitals, are being managed and run.

Considering these principles, corruption can negatively affect human rights - the protection and enjoyment as well as the equal access of individuals and entire groups to services such as education,

health, and a clean environment. As described by Olajobi Makinwa, UN Global Compact Africa Chief: "When there is corruption, human rights disappear."

In other words, corrupt actions can lead to the violation of human rights and is a barrier to their implementation and realisation (Hemsley 2015; Barkhouse et al. 2018; Wolf 2018). However, human rights and corruption have long been addressed in both academia and policy circles as two separate domains of knowledge and practice. This is reflected in the implementation gap between human rights and rights-based approaches, and anti-corruption efforts (Peters 2019; Rose 2016; Boersma 2012; Bicknell 2017; Jensen and Andersen 2017; Andersen 2018). Nonetheless, there is growing attention and recognition of the relationship, even regarding seemingly disparate issues such as the connection between corruption and the practice of torture.

What the above illustrates is that corruption - like violations of human rights - is inherently about the abuse of public office and situated authority in situations of inequality (Klitgaard et al. 2000; Rose-Ackerman and Palifka 2016). It shows that widespread corruption is a sign that something has gone wrong in the relationship between the state and society (Rose-Ackermann 1997: 34). Yet, corruption within public institutions takes many different forms, especially in situations where public authorities are not the sole domain of state institutions. It can include grand or petty, active or passive, or need or greed corruption. Most of the time, they overlap. For example, the literature on formal and informal forms of policing suggests that there are multiple groups that seek to extract resources and opportunities, mixing notions of public interest and private gain (Kyed and Albrecht 2015).

And it shows that corruption and human rights violations are part of the same contextual social dynamics, institutional practices, and political configurations. They are manifestations of the same root causes and produced by the same conditions of failing rule of law, lack of institutional transparency, and all-pervading opportunism by elite minorities to forward personal and group interests (Andersen 2018).

Conversely, less resourceful groups that are exposed to discrimination and marginalization - such as women, children, the elderly, (irregular) migrants, sexual minorities, detainees, or people living below the poverty line or on the margins of society - suffer the most from corrupt acts and corrupt institutions (Andersen 2018). These groups rely more often on public goods and services and have in most cases not the resources to seek out and receive alternative services from the private sector (UNHCR 2015). They also have fewer resources, avenues, and opportunities to demand their rights, defend themselves against violations and seek reparations.

Although the gravest examples of inadequate systems of governance or systematic practices of corruption are not dominating the European contexts, the same manifestations of inequality and coercion exist. The less resourceful groups and individuals in the margins of the social and political orders are affected in similar ways.

This similarity is based on the notions and practices of entitlement and opportunity by people with knowledge, opportunity, and authority to use their positions, social and political status, and capacity to access and utilise private and public resources to forward individual and group interests. Such practices make use of, and consequently undermine, state governance systems e.g. fiscal and taxation institutional structures, and illustrate how tax evasion, as a form of corruption, is linked with violations

of people's rights. The question is how we can determine when human rights are violated because of corruption?

As clarified in the above sections, it is the responsibility of the state to provide human rights to its people through adopting mechanisms or establishing instruments to implement and enforce international human rights laws. It follows that human rights are violated when a state fails to protect, fulfil, and recognize human rights under its jurisdiction.

However, such determination has to be subject to assessment by examining the conduct and decisions carried out by the violated state in relation to each right. This will be done, by relying on the terms of human rights laws and their interpretation, application, and the purpose of these laws. For example, the word “violation” in this context should only be used when there is a legal obligation (Gathii 2009).

Establishing a link between corruption and human rights helps to find how corruption leads to the violations of specific human rights, by grouping the human needs that must exist. The grouping is a productive way to exemplify and analyze how the basic needs of people are affected by corruption (Pearson 2014).

The following human rights are commonly recognized by the international human rights treaties, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Rights of the Child (Pearson 2013). It is worth mentioning that the rights analyzed below are examples and that corruption affects all economic, social, and cultural rights.

3.2.1 Principles of quality and non-discrimination

According to international human rights laws, any discrimination, which aims to have the effect of invalidating or damaging equal enjoyment or exercise of rights, is forbidden. Corruption acts usually lead to unequal or discriminatory consequences in relation to human rights. To illustrate. It is discriminatory when corruption restricts a person’s or a vulnerable group of people, access to adequate housing. Housing should be granted to all people and vulnerable groups should have the priority, regardless of their social or economic status. In normal cases, after eviction people will be granted alternative housing, however, they might be denied effective access because public officials who are in charge demand bribes. In terms of the health sector, corruption usually violates the right to equality and non-discrimination, when access to public health services is restricted because bribes are requested from patients. In these cases, the state has an obligation to take action to ensure that the right to health is accessible without discrimination.

3.2.2 The rights to a fair trial and to an effective remedy

Corruption is defined, in the field of the judicial system, as “acts or omissions that constitute the use of public authority for the private benefit of court personnel, and result in the improper and unfair delivery of judicial decisions. Such acts and omissions include bribery, extortion, intimidation, influence peddling and the abuse of court procedures for personal gain” (Transparency International

2007). Judicial corruption includes a wide range of corrupt acts undertaken by public officials at different points of the judicial system, which consists of the judiciary, police, and prosecutors.

Judicial corruption violates the right to a fair trial and effective remedy when, for example, a bribe is offered to a judge to exclude evidence that might lead to the conviction of a criminal. Another example of judicial corruption is when a court official accepts a bribe to lose a case file or to postpone or speed up the hearing of a case. Furthermore, police can be bribed to damage criminal evidence or obtain information or confessions using methods that violate criminal law procedures and bodily integrity.

3.2.3 The rights of political participation

Both freedom to vote and stand for elections are considered the most important rights of political participation. Corruption occurs when voters are bribed to vote or refrain from voting. This affects the integrity of an election and violates the right to vote. Another situation where corruption violates the right to political participation is when election officials are bribed to interfere with the electoral process, by bulking ballot boxes for the benefit of a particular candidate or a party and manipulating the count. As for the right to stand for election, corruption violates this right by bribing an electoral commission to disqualify or refuse a candidate.

Every state has the obligation to protect the human rights of people living within its territory and subject to its jurisdiction and to protect them from human rights violations - also related to corrupt acts. But, what happens, when the state itself is corrupt and violates your human rights because they do not provide you with the necessary public goods and services (UNHRC 2015: 8)? Furthermore, what happens if the state does not have the resources or capacities to provide adequate services and public goods?

Taxation and the ability of the state to tax citizens and businesses are key to ensuring public goods, services, and rights. On one hand, tax revenue is essential for the state to be able to live up to its obligations and, on the other hand, fiscal corruption prevents the state from providing for its citizens. The loss of revenues hampers governments' ability to provide social spending. Moreover, the quality of public services and infrastructure is undermined when government decisions are driven by bribes or nepotism. Ultimately, corruption erodes trust in government and undermines the legitimacy of taxation, and can lead to social and political instability (Johnston 2005; IMF 2022).

3.3 Fiscal Corruption and Tax Abuse

Taxation plays an important role in the resourcing of state institutions, public services, and essential infrastructure. Tax policy can serve as a vehicle for pursuing important social and political objectives, such as reducing poverty and inequality. The negative impact of tax abuse on the ability of states to deliver services, address poverty and meet their human rights obligations is becoming more apparent.

An experimental study conducted by Banerjee et al. (2022) in India indicated that fighting corruption based on monitoring and punishment reduces tax evasion. Yet, their results also showed that deterring tax evasion does not limit corruption. Thus, for an effective increase of public good provision, they call for a "big bang" deterrence policy that combines both preventive measures against corruption and tax evasion. However, more research on the corruption and tax evasion link and its

causality is needed. In that regard, the outcomes of the research activities conducted within the project VIRTEU (Vat fraud: Interdisciplinary Research on Tax crimes in the European Union) – a high-profile legal research project funded by the European Union aimed at exploring the interconnections between tax crimes and corruption – appears an innovative and solid base that may constitute the foundation of further research.[4]

In 2019, the IMF concluded that if all countries today were to reduce corruption by a similar extent, on average, as those that reduced it over the past two decades, global tax revenues could be higher by $1 trillion, or 1¼ percent of global GDP. The gains would likely be greater considering that lower corruption would increase economic growth, further boosting revenues. The evidence also suggests that corruption distorts how governments use public money. Less corrupt countries dedicate a higher share of resources to social spending and more corrupt countries overpay for building roads and hospitals, and their school-age students have lower test scores (IMF 2022).

Alongside greater attention to corporate tax avoidance and its human costs has been the advancement of the business and human rights agenda at the international level. The United Nations Human Rights Council of a set of Guiding Principles on Business and Human Rights in 2011 testifies to its growing recognition by state parties that have committed to implementing the principles nationally. It has been established that companies have human rights responsibilities and will in the future be evaluated on their willingness and ability to ensure business respect for human rights. However, despite it being a key feature in the relationship between businesses and states, corporate tax abuse (Alston and Reisch 2019); tax avoidance or evasion, has not featured significantly on the business and human rights agenda.

While tax evasion is clearly illegal, tax avoidance takes place in between moral and legal registers. As such, it is analytically similar to corruption, which balances legal conceptualizations of the lawful/unlawful with public notions of the moral/immoral (Andersen 2020).

The primary means of tax avoidance by multinationals is transfer pricing. Transfer pricing occurs when sales between subsidiaries of the same multinational are altered to shift profits from jurisdictions where genuine economic activity takes place (often indicated by the value of sales and number of employees) to jurisdictions where profits are taxed at lower rates or not taxed at all by utilising shell companies with little or no “real” economic activity. Transfer pricing can occur with loans and interest payments, goods and services, and intellectual property, such as patents and royalties (Pavone 2020). The case study on Fresenius, for example, provides strong evidence that the company uses all tools of transfer pricing to reduce corporate income tax payments where profits are genuinely earned (Netzwerk Steuergerechtigkeit 2020).

Two themes dominate the discussions on tax avoidance: harmful tax competition and aggressive tax avoidance. The first theme focuses on the competition between states to attract international companies to their jurisdictions, through lenient company taxation. It revolves around disputes over the right to tax cross-border economic activity, which is a dominant feature of the global economy.

[4] All the outcomes of the VIRTEU research project are available online on the Corporate Crime Observatory: https://www.corporatecrime.co.uk/virteu.

These debates also include the issue of tax havens, where business and private actors can deposit financial resources, outside of international purview and transparency. In essence, this is a matter of state governance and state relations within the international political system. Tax havens like all law is a social and political construct, which is contested and changeable, and conditioned by national and international political configurations and economic interests.

The second theme focuses on the behaviours and practises of global businesses in their wheeling and dealing with national and international taxation systems. All businesses that work across borders and jurisdictions face similar challenges in terms of taxation e.g. finding the right level of taxation. Businesses should pay the correct levels of tax as stipulated by the law in the country they operate but should not pay double tax if they operate across borders and jurisdictions. However, some companies actively avoid paying taxes. This is called aggressive tax avoidance, where global businesses speculate on and actively seek out loopholes, lackings and inconsistencies in national and international taxation and regulatory regimes (Payne and Raiborn 2018).

Although not illegal, many consider such actions to be immoral. In recent years, the area has received international attention, especially after the leaks of the Luxembourg, the Panama, and the Paradise papers, initiating an international debate on regulation. However, despite increasing international attention to taxation, appropriate regulation and law-making develops very slowly. And establishing a workable system that monitors and regulates the movement of finances across borders and jurisdictions, upon which to define and determine correct and adequate levels of taxation, remains a global challenge today.

From a human rights perspective tax abuse (Alston and Reisch 2019), regardless of it being evasion or avoidance, has not received significant political or popular attention. This is paradoxical, considering the potential a transparent and fair international taxation regime could have for national economies, especially for countries with weak national taxation and governance systems e.g. in terms of service provision.

Although adequate taxation does not eradicate corruption and mismanagement of government funds by itself, it provides the opportunity to increase the human and technical capacity for improved and enhanced taxation and provision of services.

We argue, that there are two reasons for the feeble attention to the connections between taxation and human rights. First, human rights are victim-oriented. In order to establish that a right has been violated, we need to identify a victim. However, it is difficult to determine legal and causal links between the acts of not paying taxes, be it, avoidance or evasion, and their effects on individuals or societies e.g. the absence of services, especially when it involves financial transactions across borders and between jurisdictions, and within companies. Second, human rights policy and activism have traditionally focused on political and social rights, and seldom touched on economic rights and obligations, beyond calls for workers' rights and fair trade.

From a corruption perspective, the two have received far greater attention. Tax havens have featured prominently in the discussions on the absence and need for international regulation when it comes to the financial transactions by un-democratic rulers and economic elites of countries with insufficient, unsatisfactory, and lacking rule of law systems.

Less attention has been paid to the 'host' countries of lenient tax regimes and their national and international obligations for transparency and accountability, when facilitating the movement of money from one jurisdiction to another. One can say that since tax havens are not illegal, although they might be considered immoral, they do not fall under the legal frameworks of standard human rights or anti-corruption regulating bodies. Regardless of the fact that tax havens are used to deposit financial assets procured by unlawful means or through illegal transactions, as shown by the Paradise and the Panama papers. The centre of attention has been on how and where the money was taken i.e. within the territorial boundaries of the state, not where the money ends or the systems and institutions that facilitate and provide the opportunities and infrastructures to move, shelter, and hide the money.

This movement of money is not just a transactional process across borders and between jurisdictions but a transformational process that transforms public funds into private financial assets that change judicial and rectifying actions from the arena of the national (il)legal to the global (im)moral - from the punishable to the despicable.

This transformation is similar to the processes of global business concerning profit transfer, internal pricing, and resource extraction, which for years have attracted attention and criticism, and responsibilities for value chains, workers' rights, and environmental damages have been difficult to institute and political solutions are wanting. A telling example is the failing attempt by the European Union to regulate the taxation of big tech companies.

Moreover, anti-corruption efforts have had a tendency to focus on the criminal acts within the territorial and judicial boundaries of the state, not the conduct of the global businesses. In other words, attention has been concentrated on the acts of politicians and other elites draining state coffers and the public authorities facilitating the financial movements involved in tax evasion and avoidance. The countries hosting tax havens and the conduct of global businesses have somehow dodged substantial attention and criticism, beyond media naming and shaming, when activists and international legal and norms setting organisations are advocating for a proactive change of taxation regulation and enforcement regimes.

3.4 Taxation and Human Rights

A human rights-based approach to taxation (tax abuse), tax avoidance and evasion, and tax havens must be victims oriented. However, beyond general normative notions about accountability and conduct, the challenge remains to establish a causal and legal relation between particular corrupt acts and specific victims. For example, it is difficult to know if and how stolen funds would have been used by the state in providing services to the citizens - would it have been used on health, education, infrastructure or defence? How and who would it benefit? Moreover, we cannot know about future actions, and therefore, it is hard to determine whether a violation of a right – e.g. right to education, right to health, etc. – is caused by insufficient funding of state institutions, and whether this prevents the provision of adequate services, in general, or for specific groups in society, or if they are caused by corruption. We only know that state funds have disappeared, and people are in need of services.

However, if we consider the State's positive obligations to engage in an activity to secure the effective enjoyment of fundamental rights, as opposed to the classical negative obligation to merely abstain from human rights violations, it might change the perspective on corruption and taxation.

What if the deposit of stolen funds, in a tax haven, could be seen as a violation of international human rights law because the funds could and should have been used to facilitate the enjoyment of human rights? Similarly, what if tax evasion of large global businesses could be seen as a violation of international human rights law because the funds could and should have been used to facilitate the enjoyment of human rights, in any of the taxable constituencies?

The businesses would be in breach of international human rights law and the states would be in breach of international human rights law, by not taxing the companies. This could change the conversation on taxation and the relationship between tax authorities and businesses on a global scale. It would introduce a new taxation regime with new forms of accountability and new measures of enforcement, both normatively and legally.

4. Exploring and illustrating the link between fiscal corruption and human rights violations

4.1 Germany as one of the tax havens: the Fresenius Model

German companies are among the world's leading tax avoiders (CICTAR 2021). Fresenius is one of the largest multinationals in the country and even the world's fourth-largest healthcare company. In contrast to other multinationals, the company's income is mainly derived from government funding for public healthcare, which means it is funded by citizens' taxes. Fresenius is involved in several separate but still related industries (Netzwerk Steuergerechtigkeit 2020). Yet, due to its complex structure and not publicly available information, it is almost impossible to disentangle its global corporate structure and tax practices.

Fresenius is located in almost every known tax haven around the world such as Hong Kong, Singapore, the Cayman Islands, the British Virgin Islands, or Panama (Fresenius Medical Care 2021), and uses finance companies in the Netherlands, Ireland, Luxembourg, or Delaware to issue around €9 billion in debt traded in Luxembourg to finance global operations. Strong evidence exists that Fresenius uses all forms of transfer pricing to avoid taxes where profits are earned to shift profits and avoid higher corporate taxes such as in Germany and other countries (Netzwerk Steuergerechtigkeit 2020). Transfer pricing can appear on transactions that involve debt and finance, goods and services, and intangible property rights (e.g. intellectual property, patents, royalties). In the case of Fresenius, the company avoids its tax liability based on reporting high reports where corporate taxes are low. In particular, the global structure of Fresenius as well as other tax-dodging multinationals facilitates aggressive tax avoidance which withholds governments of funding that is needed to pay for healthcare.

In the German or US market, profits are often artificially reduced. According to the Fresenius fillings, its tax rate was only 18.2%, although the company generates its sales primarily in countries with a corporate tax rate of at least 30% (CICTAR 2021; Netzwerk Steuergerechtigkeit 2020). It is assumed that the German DAX 30 company Fresenius Medical Care has avoided paying taxes up to €2.9 billion globally through aggressive tax planning. Furthermore, €8 billion of the group's untaxed profits are

held in offshore accounts. Germany may lose more than any other EU country to European tax havens from transfer pricing and thereby financial resources that could be used for investments in education, health, or the protection of the environment.

Ver.di (Vereinte Dienstleistungsgewerkschaft), the union that is responsible for health services in Germany, often criticised these corrupt practises: “The community is being denied money that is urgently needed for investment, not least in the health sector”, said Ver.di federal board member, Sylvie Buehler. “[These schemes] weaken governments’ ability to invest in health research, which has proven to be fundamental in medical breakthroughs” (Netzwerk Steuergerechtigkeit 2020).

Fresenius and many other companies provide an example of why the outdated global tax system must move towards the unitary taxation of all multinational corporations. The current system is based on the “arm’s length principle” in which multinationals insist that sales within the company are on market terms. These assertions of sales at “arm’s length” are in many cases clearly fiction, but difficult for tax authorities to challenge under current laws. Still, multinational companies like Fresenius claim that all related party sales are at “arm’s length.” In their group tax policy it is explicitly written that “Intercompany transfer pricing policies are set in accordance with arm’s length’s principles following international standards, i.e., taxes have to be paid on profits according to where value is created (Fresenius Tax Policy 2021). Yet, it rather appears that multinational companies obtain favourable tax rulings.

In particular, these types of aggressive tax avoidance schemes have to be made illegal and multinationals must be prohibited from using transfer pricing schemes. Thus, governments must investigate possible reforms to increase transparency, accountability, restore confidence and make sure that companies meet their global tax obligations. They must make sure that they do not fund or support these sorts of tax-dodging companies and require greater transparency and compliance to ensure that laws are followed - it is required under the OECD Guidelines for multinationals to follow the (Spirit) of the law regarding taxation. Public contracts and government funding should not be given to companies that avoid their tax obligations or refuse to be transparent about their tax payments including party transactions and transfer pricing. Also, future contracts and funding should be denied.

One step would be for Fresenius to dissolve its subsidiaries in tax havens and implement the new Global Reporting Initiative (GRI) standards for reporting on tax transparency. The GRI has developed a reporting standard on tax transparency including public country by country reporting that requires reporting on economic activity including sales, employees, and assets. There are also discussions at the OECD about a global unitary taxation system.

More important, governments have to close tax loopholes and accept public country-by-country reporting; they have to change the outdated global tax system so that essential public services that fulfil human rights like health care and education can be adequately funded. In addition, the European Union has to continue to pressure its Member States to close loopholes that enable multinationals to legally avoid income tax payments where profits are generated (CICTAR 2021; Netzwerk Steuergerechtigkeit 2020).

4.2 Panama Papers: Secrecy Industry and Facilitators

In 2016, the International Consortium of Investigative Journalists and more than 100 media partners around the globe started to publish an investigation exposing a system of crime, corruption and financial wrongdoing including tax evasion and money laundering, hidden by secretive offshore companies. They exposed more than 11.5 million financial and legal records that belong to a Panamanian law firm and corporate service provider as well as related entities, Mossack Fonseca. During its forty years of existence, Mossack Fonseca created 214,000 shell companies. An anonymous whistleblower shared documents from the firm with the German newspaper Süddeutsche Zeitung. The leaked documents were analysed by the newspapers together with the International Consortium of Investigative Journalists (Süddeutsche Zeitung 2021).

The documents revealed that the firm registered most of these companies in other tax havens, in particular in the British Virgin Islands, making their real owners untraceable through public records. These offshore companies held accounts in European banks - a popular model in the financial secrecy industry, as more journalistic investigations have shown.

Yet, while offshore company formation is a legal business, leaked emails seen by the investigative journalists exposed how the company dealt with known criminals, backdated documents, and obscured evidence. A common claim by users of offshore companies is that they do so out of privacy concerns. Yet, as the Panama Papers and subsequent investigations have proven, these parallel structures all too often deliberately service the needs of those who wish to conceal conflicts of interest, pay bribes, avoid sanctions, cheating tax collectors, and launder money.

Behind the shell companies set up by Mossack Fonseca hid at least 140 politicians and public officials, including 12 government leaders, former at the time. Furthermore, there were also 33 individuals or companies that had been blacklisted and sanctioned by the US government for fraud, money laundering, trafficking, and terrorism.

The investigation also revealed possible links to the Brazilian engineering company Odebrecht. The partner at Mossack Fonseca, Ramon Fonseca, however, denied that his company had a connection to Odebrecht which bribed officials in Panama and other countries to obtain government contracts in the region between 2010 and 2014 (Garside 2017; see also US Department of Justice 2018).

The second leak of the Mossack Fonseca documents in August 2018 illustrated how much the company scrambled to cover up violations of beneficial ownership transparency rules in the immediate aftermath of the scandal. While the initial investigations into Mossack Fonseca by Panamanian authorities did not go far, in 2017 the firm's two founders were arrested in Panama in connection to the Lavo Jato corruption scandal, as part of an ongoing joint investigation with Brazilian prosecutors. In December 2018, the US authorities also charged four former employees of the firm. In 2018, Assistant Attorney General Benczkowski of the Justice Department's Criminal Division said: "Law firms, asset managers, and accountants play key roles enabling entry into the global financial system." "As alleged, these defendants went to extraordinary lengths to circumvent U.S. tax laws in order to maintain their wealth and the wealth of their clients," said Manhattan U.S. Attorney Berman. "For decades, the defendants, employees, and a client of global law firm Mossack Fonseca allegedly shuffled millions of dollars through offshore accounts and created shell companies to hide fortunes.

In fact, as alleged, they had a playbook to repatriate untaxed money into the U.S. banking system (US Department of Justice 2018).

European banks that move the money of companies set up by Mossack Fonseca, are also increasingly being held liable for violating national and international anti-money laundering rules. Germany's biggest bank, Deutsche Bank, which holds accounts of shell companies owned by the convicted former Prime Minister of Pakistan Nawaz Sharif and his daughter, was raided in November 2018.

Investigative reporters alleged that Swedbank may have misled US authorities in their Panama Papers investigation, which is likely to prompt another probe. The bank has come under fire after Swedish investigative journalists revealed it had in fact dealt with suspicious Danske Bank clients, contrary to what the bank had repeatedly claimed. These developments suggest that the full breadth of all crimes committed has yet to be revealed. As investigations into the Panama Papers continue across the world and more authorities examine the evidence contained in the Panama Papers. For now, twenty-three countries have already recovered at least US$ 1.2 billion in taxes, heads of governments implicated in corruption or tax avoidance have resigned or faced prosecution and there have been investigations in at least 82 countries.

Although it is impossible to directly pinpoint what the recovered tax funds will be used for or have been used for in the taxable jurisdictions, be it, debt alleviation, health, education, energy, or defence, it nonetheless shows that states want to tax companies and is able to cooperate to reclaim missing taxes, across territorial boundaries and jurisdictions. It illustrates that the effects of tax evasion and avoidance have clear links to the capacity of the states to provide for their citizens. Furthermore, it shows the potential and possibilities of a human rights approach to taxation, if states can be seen as in breach of international human rights law, when they do not live up to their positive obligations of protection, either by not preventing tax evasion and avoidance or by hosting funds claimed through tax evasion and avoidance. Illicit appropriation of public funds is a violation of international human rights law because it inhibits the states to provide, protect, fulfil and enforce human rights for their citizens.

An analysis by Graves and Shabbir (2019) found that "16 countries or international bodies achieved at least one substantive reform related to the Panama Papers by March 2019." Still, the key government players in the offshore industry including the British Overseas Territories, Panama, and the United States have yet to reform their financial systems and close important loopholes that allow abuse.

In the wake of the Panama Papers revelations, 300 leading economists argued that tax havens serve no useful economic purpose and called for tax transparency in an open letter to governments preparing for the 2016 Anti-Corruption Summit in London (Dewast 2016). The Summit saw many high-level commitments from more than 40 countries, including on beneficial ownership transparency, although some governments were repeating previous commitments made at other fora, including the G20 and the Financial Action Task Force. Yet, the pledge tracker of Transparency International UK shows that over half of those commitments still have to be implemented (TI Pledge Tracker 2022).

Similar to the German Fresenius model, the Panama Papers and many other fiscal corruption scandals have proven how strong the relationship between types of corruption and human rights violations can be, and how a positive obligations taxation regime as part of other governmental activities could

support anti-corruption efforts. Especially, governments have the capacity to push for a different approach to taxation, which includes a victims-oriented perspective on the effects of avoidance and evasion and ensures liabilities and responsibilities of states to abide by their obligations within human rights law. This obliges states to protect their citizens from crimes and violations and to respect the enjoyment of human rights in society. The Danske Bank Money Laundry scandal is an additional case that illustrates the connections between fiscal corruption, taxation, and human rights.

4.3 The Danske Bank Money Laundry Scandal: sophisticated hidden bank networks

Danske Bank's money-laundering scandal is one of the largest money-laundering scandals in European history. It began in 2007 following the acquisition from Danske Bank of Finnish Sampo Bank, which also had an Estonian branch. Between 2007 and 2015 over €200bn of suspicious transactions originating from Russia and elsewhere flowed through its Estonian branch non-resident portfolio.

Danske Bank is the largest financial institution in Denmark with a focus on the Nordic region and a presence in eight countries. In 2021, the bank serviced some three million customers, mostly personal but also approximately 2300 business customers (Danske Bank 2022). Danske Bank is listed on the Nasdaq OMX Copenhagen stock exchange. In Denmark, it offers, in addition to banking services, life insurance, pension, mortgage credit, wealth management, real estate, and leasing services. It is licensed by the Financial Supervisory Authority in Denmark, which considers Danske Bank to be one of six systemically important financial institutions in Denmark - deemed essential to the financial system and 'too big to fail'.

In 2017, Danske Bank posted a total income of some DKK 44,4 billion and a 15 billion net profit. Over 93% of income was generated in the Nordic countries (Denmark, Sweden, Finland, and Norway). Another 4% of gross income was generated in the UK (Northern Ireland). The Baltic branches (i.e., Estonia, Latvia, and Lithuania) contributed only 0.5% of gross income (Danske Bank 2018).

In November 2006, Danske Bank announced its acquisition of Finnish-based Sampo Bank which was completed in February 2007. It included SampoBank's subsidiary in Estonia named Sampo Pank. Since the 1990s, Sampo Pank has had a portfolio of non-resident customers.

Sampo Pank originated in two Estonian banking entities established in 1992, in the immediate aftermath of the collapse of the Soviet Union, namely Eesti Forekspank and Eesti Investeerimispank. At the time, there were strong economic ties between Estonia and the Russian Federation. The Eesti Forekspank developed a significant client base of retail and corporate customers from Russia, with a focus on cross-border payments and foreign exchange transactions involving the conversion of currencies. As a result, the Estonian branch had built up a sizable portfolio of customers who resided outside Estonia, the so-called 'Non-Resident Portfolio'. This portfolio, which over time numbered roughly some 10,000 firms and individuals, was dominated by customers from "the Russian Federation and the larger Commonwealth of Independent States ("CIS"), including countries such as Azerbaijan and Ukraine" (Bruun and Hjejle 2018, FSA 2018).

A year after the acquisition from Danske Bank, Sampo Pank in 2008 turned into a branch of Danske Bank. It changed its name to Danske Bank in November 2012. However, the Estonian branch remained under its own management and largely independent from operations in Danske's headquarters in

Copenhagen (Danske Bank 2018). In 2008, Danske Bank's plans to migrate the Baltic branches onto the Danske's main IT platform were abandoned on the grounds of cost, based on experiences from Finland, and those branches' AML checks suffered as a result (Milne and Winter). Control from Copenhagen was further impaired by most of the documents at the Estonian branch being written in Estonian or Russian language, a practice the branch sustained until its closure (FSA 2018).

Organisationally, the Non-Resident Portfolio, consisting of some 3000 to 4000 customers at any one time, was managed by a separate unit, called the International Banking Division (IBD). Until the end of 2015, when it was closed and the Non-Resident Portfolio terminated, this division held a significant share of this overseas business in the local banking system.

After the Danish newspaper Berlingske in 2017, investigated and published a series of articles on the bank's facilitating role in investing, hiding, or converting the proceeds of crimes in an organized manner within the Non-Resident Portfolio, the board of Danske Bank initiated an inquiry after consistent public and regulatory pressure on the banks alleged involvement in Russian money laundering schemes in (Lund et al. 2019).

In September 2018, the board released a report on the 'Non-Resident Portfolio at Danske Bank's Estonian branch', undertaken by an independent legal firm, Bruun & Hjejle. The report concluded that, for a period between 2007 and 2015, some 7.5 million payment transactions involving around 10,000 'non-resident' customers that had been handled through the bank should have been deemed 'suspicious', according to the bank's Anti-Money Laundering (AML) procedures. The report estimated that these transactions involved some EUR 200 billion in value.

On receiving such an adverse report, the board estimated the bank's gross income from these suspicious pavements totaled some DKK 1.5 (EUR 0.2) billion and this was to; "(…)be donated to an independent foundation supporting initiatives to combat international financial crime" (Danske Bank 2018). This altruistic statement has not materialized into concrete measures and the foundation has - so far - not been established.

Estonia's general prosecutor, the Danish Public Prosecutor for Serious Economic and International Crime (SØIK), the Danish FSA, and the U.S. Department of Justice, all launched investigations into the Estonian branch's involvement in money laundering. The Bank concluded its own internal investigations into the case in February 2021. CEO Thomas Borgen and Chairman of the Board of Directors Ole Anderson resigned, and Estonian prosecutors detained ten former employees at the Tallinn branch on the basis of knowingly enabling money laundering with Russian, Georgian and Azerbaijani customers.

The cases are ongoing, and the results of the legal proceedings are yet to be known. However, despite this being a clear-cut case of money laundering of finances coming out of Russia, we still don't know where the money originated – was it direct illegal earnings from criminal activities, and/or state resources and/or tax avoidance? The legal proceedings in Denmark, Estonia, the US, and the UK, focus on the criminal offences of the bank staff and their private customers, so far not on the possible missing taxes of the host countries of the financial transactions. In other words, the potential missing tax income will not and cannot be established based on the current legal proceedings, although criminal liabilities and offences are under judicial process in Estonia (Søltoft and Lund 2022).

Although the bank has issued a public statement it will donate the earnings of the illegal transactions to a philanthropic foundation, it has not materialized into any concrete measures. If liabilities were different and thus included positive obligations to ensure the enjoyment of human rights, then money laundering and facilitation of money laundering could be seen as breaches of international human rights standards, and change the obligations and levels of accountability of monitoring bodies, both domestically and internationally, when concerning financial transactions across borders. Consequently, the national monitoring mechanisms inaction or insufficient actions to prevent the money laundering through the bank would be in breach of international human rights law, herein the positive obligations to ensure, protect and fulfil the rights of the citizens of all the countries involved.

In other words, not just Denmark and Estonia would be liable, being the host countries of the bank facilitating the illegal money transfers but also the countries where the money originated, be it, Russia, Azerbaijan, etc., and the recipient countries where the money ended, such as the tax havens of Seychelles and Panama. Recent Estonian investigations have shown that some of the money coming through the Danske Banks Estonian branch, came from previous illegal activities in the US, Iran, and Switzerland (Søltoft and Lund 2022), not just Russia, Azerbaijan, and Georgia, as the initial investigations found.

Hence, applying a human rights perspective to money laundering as well as tax evasion and avoidance potentially extends the legal liabilities to encompass state parties under international human rights law, not just the criminal liabilities of the involved companies and individuals facilitating illegal and/or illicit financial activities. In effect, it could expand the responsibilities of the financial monitoring bodies in the host countries, in this case, Denmark and Estonia, to cover human rights law and the embedded obligations. Thereby they would be liable for breaches, which denied the full enjoyment of the citizens' rights, because they did not ensure the proper conduct of the companies due to the lack or absence of effective and adequate taxation, both in the originating country and in the facilitating country of the financial transactions.

This would mean that state parties also would be liable for any transgression of international human rights law. This would change the role of the states in financial transborder crimes; from a role of monitoring and prosecuting authority to a liable party with specific responsibilities and obligations as stated in international conventions.

The case of Danske Bank exposes the interlinked responsibilities and obligations between the financial sector and the state. It shows that a human rights perspective, not just illuminates how appropriate and suitable taxation can advance the enjoyment of rights but also can be used to analyse how fiscal corruption undermines the state’s ability to claim revenue, allocate resources and provide services. It shows the blurry boundaries between money laundering and tax abuse, and the liabilities of the companies and states facilitating and hosting the financial transactions. As such, it illustrates and underscores that fiscal corruption is not a victimless crime.

5. Conclusion

Corruption - in the form of tax evasion and avoidance - and transgressions of human rights are two sides of the same coin. Human rights violations can be the outcome of acts of corruption, and corruption cannot occur without violating human rights. This conclusion is clearly found in most Western countries where governments are corrupted and the standards of human rights, stipulated in international treaties and conventions, are ignored or disregarded. Consequently, to establish that corruption leads to human rights violations, it is important to determine when human rights are violated by acts of corruption and how acts of corruption and human rights violations are linked. This case illustrates how to approach and analyse fiscal corruption as a violation of human rights.

The existence of corruption is the result of interactions between public and private interests and is a matter of opportunity and an issue of morality. That is why the state interferes in these interactional processes and relations, in order to create disadvantages and preventive measures to inhibit corrupt practices, disincentivise motivations, and uproot environments conducive to corrupt behaviours (Klitgaard et al. 2000; Ferreira and Morosini 2013). Yet, need motivated corruption often also exists, alongside and within the same environments of tax corruption, especially in countries marked by widespread corruption in society. It, thus, indicates the difficulties of developing adequate and relevant policies and measures that address the many consequences of those illicit practices, across institutions, sectors, and society.

In this paper, we have shown how we can approach and analyse the ways in which fiscal corruption undermines the state's ability and capacity to promote, protect and enforce the enjoyment of human rights and lead to the violation of fundamental human rights. It is an approach that relies on a victim-oriented approach, in order to explore and investigate how fiscal corruption as tax evasion and money laundering affects states' ability and capacity to ensure the rights of their citizens.

However, there is a long way to go before we can trust that governments and international authorities are effectively detecting and preventing cross-border corruption and financial crime. Local and international civil society, including NGOs such as Transparency International (2018), are helping advance much-needed reforms. Therefore, citizens on the ground have an ever-important role in demanding that governments adopt and enforce laws that would prevent such abuse from happening. For these processes to be effective we need taxpayer education (OECD 2021). Only with the widespread consensus in our societies will these efforts translate into a long-term change in attitudes and behaviours, and institutional practices.

The disclosure of the Luvleaks, Panama, Pandora, or Paradise papers has shown the important role of whistleblowers who reveal corporate wrongdoing and contributed to the development and subsequent implementation of the EU directive on whistleblower protection, agreed in 2019.

Furthermore, the UNCAC Coalition (2021) in a statement to the CoSP plenary in Egypt on 16 December 2021, emphasised that States need to step up their efforts to prevent corruption globally and to implement the commitments made under the UNCAC and the UNGASS Political Declaration. They highlight several areas that are also relevant for the limitation of fiscal corruption and need action. They include:

(1) Transparency of company ownership: The journalistic reporting around the Pandora Papers has once again highlighted the role of obscure shell companies in facilitating corruption and money laundering. States Parties should ensure that information on companies, including their directors, direct owners and beneficial owners, is made freely and publicly accessible online to ensure that everybody can track who owns and controls companies and use this information to identify possible corruption risks. This information needs to be available to the public.

(2) Advancing open contracting: Procurement remains the governments' number one corruption risk. Governments should ensure full transparency of public procurement and public contracting, including privatizations, and the award of subsidies, grants, concessions, and licenses, by publishing all documents and data online in easily accessible and standardized formats.

(3) Access to Information: More than 130 States have adopted access to information legislation, an important tool to prevent corruption. However, citizens' right to access information is often not respected in practice. States should ensure effective access to information, including by establishing and strengthening independent Information Commissioners or Commissions overseeing the implementation of legislation, and by publishing documents and information of public interest online by default.

(4) Asset declarations: A powerful tool to hold public officials to account are comprehensive annual declarations of their interests, income, and assets. States should ensure that declaration requirements are put in place and that this information is independently verified; that non-compliance is sanctioned and that the information is published in easily accessible formats to ensure public accountability.

(5) Independence of anti-corruption bodies: In several countries, the political independence of anti-corruption bodies is under threat, and the work of anti-corruption bodies is limited by inadequate resources and mandates. States should take action to uphold their UNCAC commitments and strengthen the capacity and independence of State bodies involved in preventing corruption.

(6) Inclusion of civil society: Corruption prevention measures should be developed, implemented, reviewed, and strengthened in an inclusive manner. States need to ensure that civil society is able to participate in the development of anti-corruption strategies, action plans, and measures, in line with UNCAC provisions.

(7) an enabling environment for civil society and journalists is essential for the prevention of corruption. In many countries, attacks against civil society representatives, journalists, and whistleblowers are undertaken. States need to step up their efforts to protect and defend freedom of speech and assembly, as well as ensure that those who report on and uncover corruption can do so safely without fear of retaliation.

In addition, states should increase their efforts not just to implement measures to prevent and inhibit corrupt practices within their territories and jurisdictions but also

(8) emphasise their scrutiny of national companies in their international dealings and financial transactions. Paying special attention to the companies and businesses that play a facilitating role in these global transactions. For example, linking capital from third countries to tax havens. Not just

looking at the criminal aspects of such dealings but also including a human rights perspective with a focus on the positive rights to ensure the enjoyment of human rights, including citizens' access to basic services provided through proper, adequate, and lawful taxation.

Consequently, the states should work to realise the establishment of tax abuse as a violation of human rights. This includes legal liabilities for involvement in the facilitating of transactions and hosting of financial resources which avoid or evade proper and accurate taxation, for example, expert advisory companies and state-created tax havens. Finally, it needs to be ensured that taxes are paid, and revenues are used to the benefit of the population (UNCAC Coalition 2021). Therefore, a human rights perspective can promote proper and correct taxation and allocation of resources.

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VIRTEU

VAT fraud: Interdisciplinary Research on Tax crimes in the European Union

Grant Agreement number: 878619
Project Coordinator: Dr. Costantino Grasso,
Associate Professor (Reader) in Business and Law

Manchester Metropolitan University

VIRTEU is a high-profile legal research project, which includes both comparative and interdisciplinary studies, funded by the European Union under the HERCULE III programme.

The project explores the interconnections between tax crimes and corruption to unravel the intimate relationships that exist between fraudulent and corrupt practices in the area of taxation with a focus on VAT fraud, which poses a direct threat to the European Union's financial interests.

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