



**Changing Policy: Lessons from the  
Trafficking in Persons Act (2013) in  
South Africa**

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## **Abstract**

Concern around human trafficking in South Africa started in the early 2000s, coinciding with the ratification of the Palermo Protocol and passing of the U.S.'s Trafficking Victim's Protection Act, which mandates the Department of State to annually release a trafficking report which ranks countries' responses to trafficking. Within this global context, South Africa became known as a 'source, transit, and destination' country for victims of trafficking and, under increasing pressure, began to work towards passing national anti-trafficking legislation. The aim of this project was to examine the policy process behind the development and passing of this Act as a way of better understanding how policy is made and influenced in South Africa. As such, the objectives of the research were to document the policy process leading to the Act and map out the key policy actors and mechanisms shaping the policy framework. As little is known about how policy is made in South Africa, this project was exploratory in nature. Using the minutes of parliamentary discussions, stakeholder mapping, and key informant interviews, the data from which was all analyzed using the '3-I' framework and thematic content analysis, we attempted to map out the various roles played by key actors and organizations in influencing the Trafficking in Persons Act. From our findings it is clear that the policy process in South Africa is shaped by a combination of international and local pressures. Whilst research is valued in the policy process, it is not actively sought after as policy makers rely on a combination of popular narrative, local and international pressures, and research when making decisions.

## Executive Summary

The broader aim of this project was to better understand how policy is made in South Africa. As such, the objectives of the research were to document the policy process leading to the Prevention and Combatting of Trafficking in Persons Act and map out the key policy actors and how they shaped the policy development.

Concern around trafficking started in Europe in the 1990s, but by the early 2000s, the concern with trafficking had become global in a number of ways. Firstly in 2000, the United States (U.S.) passed legislation that requires the Department of State to annually publish a global Trafficking in Persons Report that assesses how countries across the world are responding to the problem of human trafficking. This has placed trafficking squarely on the diplomatic agenda. Secondly, in the same year, the UN's Palermo Protocol was created which requires those who ratify it, as South Africa did in 2004, to implement national trafficking legislation. Finally, numerous pieces of 'research' and documentary work, which claimed to document evidence of trafficking in diverse places, created the belief that trafficking in persons was a global phenomenon (for example, Bales, 2012; Bolkovac & Lynn, 2011). Global concerns found a positive reception in the South African human rights environment, given South Africa's human rights framework and emphasis on gender equality.

The buildup to the South African Trafficking Act began in earnest in the early 2000s as organizations began to claim that they had evidence of trafficking in persons, and gained further momentum in the lead up to the 2010 FIFA World Cup around concerns about an increase in victims during the sporting event (Gould, 2010; Richter, Luchters, Ndlovu, Temmerman, & Chersich, 2012).

As little is known about how policy is made in South Africa, this project was exploratory in nature. Using the minutes of parliamentary discussions, stakeholder mapping, and key informant interviews, the data from which was all analyzed using the '3-I' framework and thematic content analysis, we attempted to map out the various roles played by key actors and organizations in influencing the Trafficking in Persons Act. Although the '3-I' framework allowed us to systematically lay out the building blocks of the policy process, we felt that it did not capture many of the nuances of the process. It really was, as Gauvin describes, a 'theoretical checklist' (2014). As a result, we did further analysis using Sabatier and Jenkins-Smith's Advocacy Coalition Framework (ACF) (Jenkins-Smith, Nohrstedt, Weible, & Sabatier, 2014).

One of the nuances of our research, which the '3-I' framework failed to capture, was the aligning of certain ideas and interests into two very distinct groups. The nuances of this are captured, however, by the ACF, which talks of subsystems and coalitions. A subsystem is 'defined by a policy topic, territorial scope, and the actors directly or indirectly influencing policy subsystem affairs' and is contested by various coalitions which consist of both public and private organizations which 'seek to manipulate the rules of various governmental institutions to achieve' the practical objectives of their ideas and interest. This maps quite nicely on to our understanding of trafficking in

persons as being a set of ideas, a subsystem, contested by two distinct coalitions – the anti-trafficking coalition and the rights based coalition.

### **Results**

A stakeholder analysis revealed, at a local level, two competing coalitions within the trafficking policy subsystem. The anti-trafficking coalition, which comprised primarily local civil society organizations, such as ANEX-CDW and the National Freedom Network, with some support and influence from international organizations and the U.S., would ultimately ‘win’ the primary contestation within the subsystem, as the Act was passed and implemented. The second coalition, within the trafficking subsystem, was the rights-based coalition. The organizations making up this coalition are not focused on trafficking per se, but are focused on human rights issues and include the organizations that advocate specifically for the decriminalization of sex work and predominantly expressed concern that the Trafficking Act could increase the vulnerability of sex workers and migrants. Nevertheless, both coalitions agreed that trafficking, where it exists, should be eliminated.

### **Institutions**

The draft Trafficking Bill was introduced to Parliament in 2010 where it was under discussion until mid-2012 when Parliament passed the Act on to the President to sign (29 July 2013). It would take an additional two years for the Act to become operational on 9 August 2015. In the end, it took 1942 days for the Act to pass through Parliament and be implemented; significantly longer than the 457 days it takes legislation of the same kind (section 75) on average (‘How Long Does It Take To Pass And Enact Bills? | PMG’, n.d.). This delay was due in part to the fact that five government departments were required to draft regulations detailing how they would implement the Act. Concern was also raised over the role of Home Affairs, who some felt were deliberately slowing down the process because of their concerns that it would create a ‘back door’ for undocumented migrants.

While there were many institutions involved in the policy process, the use of these institutions by various organizations and individuals interested in seeing the Act passed appears to have been minimal. While organizations did make submissions and presentations to Parliament, their success was primarily in being able to put trafficking in persons on the national agenda to the extent that when asked how the Committee knew that it was eastern European and Asian syndicates who were the perpetrators of trafficking, one of the members of the committee responded that ‘it’s something that’s known’.

### **Ideas**

The primary idea that was contested throughout this process was whether trafficking was happening on a large scale in South Africa or not. This came down to two different sets of assumptions and ideas; one around evidence and what should count as evidence in the policy making process, and the other was about whether women and children have agency and can choose to migrate or sell sex of their own volition. Concerns and ideas around migration, security, and border control were also prevalent throughout this process with Parliamentarians and civil society

organizations arguing that the criteria for ‘trafficking’ ought to be narrowed to ensure that migrants who are not victims of trafficking are not able to abuse the system.

### **Interests**

Our findings did not indicate that there was any financial or economic benefit to be gained from the passing of this Act. The benefit for South Africa as a country appears to have been in respect to the moral economy and the state’s reputation with regards to human rights. The role of the international community was fairly ambiguous. Although the U.S.’s annual TIP Report and South Africa’s reliance on President’s Emergency Plan For AIDS Relief (PEPFAR) funding were seen as influencing the Act in some way, most parliamentarians and U.S. embassy staff felt that this played a secondary role to the desire by the South African government to project an image of human rights protection was more important.

The primary group who had an interest in the creation of a Trafficking Act was, however, local civil society who had taken on trafficking in persons as a core part of their work. However, although civil society and some other stakeholders, including the International Organisation for Migration (IOM) and one of the parliamentarians interviewed believe local civil society to have had a large impact, other parliamentarians remained unconvinced. Our research does indicate that local NGOs played a big role in creating public panic about trafficking in South Africa even if their influence on the actual policy writing was limited.

### **Conclusion**

From the findings, it is clear that understanding the reasons behind the Trafficking in Persons Act is no easy matter. There appear to have been two key stages in the process, which would eventually lead to the passing of the Act. The first was during the 2000s when international actors, such as the U.S. government and international organisations, and local civil society began to mobilise around the idea that trafficking in persons was a prevalent problem in South Africa. The key contribution of these actors was to create a set of ‘facts’ in the national conversation regardless of the research evidence (Bonthuys, 2012). The second was during the deliberations on the Bill when parliamentarians were essential to getting the Act passed. We suspect that the willingness of these parliamentarians to pass the Act was in part because trafficking had become such a part of the national conversation and that the evidence with which they were provided was not sufficiently questioned and contested in the mainstream media to allow them to question the need for the Act.

While the passing of the Act does not appear to have had any financial or economic gains for any party, it did serve to validate the idea that trafficking is a prevalent issue in South Africa and has given credence to the concerns of the anti-trafficking movements, for example that all sex work is trafficking and that all trafficking is sex trafficking due to the emphasis on sex trafficking that the anti-trafficking movement created (Brennan, 2008). As such, the passing of the Act has primarily served the interests of those who are against the decriminalization or of sex work in South Africa. Consequently, the Act has had a gendered impact re-enforcing the idea that women who migrate or enter sex work cannot do so of their own volition, but must be forced

into it. The increased power that the Act will give the police force to identify victims of trafficking will most likely lead to an increase in 'raid and rescue' operations in brothels and on the streets, which primarily endanger women who choose to sell sex and are then subject to the abuses of the police

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## **Acronyms and Abbreviations**

A21 – Abolitionists in the 21<sup>st</sup> century

ACDP – African Christian Democratic Party

ACF – Advocacy Coalition Framework

ANC – African National Congress

CGE – Commission for Gender Equality

CSO – Civil Society Organisation

DA – Democratic Alliance

DHA – Department of Home Affairs

DOJCD – Department of Justice and Constitutional Development

DSD – Department of Social Development

IOM – International Organization for Migration

LGBTI – Lesbian, gay, bisexual, transgender, intersex

LHR - Lawyers for Human Rights

LRC – Legal Resources Centre

MeCAHT – Media Campaign Against Human Trafficking

NFN – National Freedom Network

NGO – Non-governmental Organization

NPA – National Prosecuting Authority

Palermo Protocol – Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (2000)

PEPFAR – U.S. President’s Emergency Plan for AIDs

SALRC – South African Legal Reform Commission

SAPS – South African Police Service

SWEAT – Sex Worker Education and Advocacy Taskforce

The Committee - Committee for Justice and Correctional Services

TIP – Trafficking in persons

Trafficking in Persons Act - Prevention & Combatting of TIP Act (No. 7 of 2013)

TVPA – Trafficking Victims Protection Act or William Wilberforce Victims of Trafficking and Violence Protection Act

U.K. – United Kingdom

U.N. – United Nations

U.S. – United States

## Introduction

Trafficking in persons emerged as a global concern in the mid-90s and became 'institutionalised remarkably quickly' (Weitzer 2006: 33) making its way into the legislation of countries around the world and onto the agendas of many varied international organisations. In this paper we analyse the different actors, ideas, and influences that shaped how, why, and in what form South Africa's *Prevention and Combatting of Trafficking in Persons Act* (2015) was passed.

Through tracing the development of the anti-trafficking discourse, the different actors involved, and the Act, this research shows that evidence plays a limited role in policy making in South Africa. We show that ideas and issues at a global level affect the development of national policy, but that this is not necessarily immediate nor is global pressure sufficient for national policy to be implemented. In addition, we review some of the existing policy frameworks (such as the 3-Is frameworks and the ACF) and argue that those which act as descriptive guidelines to guide policy research were more useful in the South African context than those offering very detailed hypotheses given that there is an absence of pre-existing work documenting policy change outside of the global North.

Under the new democratic dispensation, South Africa has demonstrated a strong commitment to the global human rights agenda. For example, the Constitution that was passed in 1996 remains one of the most progressive constitutions in the world twenty years later. However, it must be noted, this has not always been accompanied by progressive implementation. By way of example, although South Africa has explicitly written sexual orientation and gender identity into its Refugees Act<sup>1</sup> as a ground for asylum, the rights of LGBTI asylum seekers are routinely undermined by bureaucratic inefficiency and prejudice (see Palmary, 2016 for more detailed analysis). Nevertheless, given the legal entrenchment of human rights, it was not surprising that South Africa would sign the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, supplementing the *United Nations Convention Against Transnational Organized Crime* (Palermo Protocol, 2000), and ratify it four years later. Concerns around trafficking in South Africa began as early as 2001 when the U.S. State Department released its first Trafficking in Persons (TIP) Report (U.S. Department of State, 2001). At this time South Africa was ranked as 'Tier Two' in its responses to trafficking.

Although one of the requirements of having ratified the Palermo Protocol is implementing national legislation to criminalize and combat trafficking in persons, the process to pass this legislation, which culminated in the enactment of the 2013 *Prevention and Combatting of Trafficking in Persons Act* in August 2015, would only start in South Africa in the build up to the 2010 FIFA World Cup.

The discussions about trafficking legislation, both in and outside of Parliament, saw great divisions amongst stakeholders about the motivations for the Act, its focus,

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<sup>1</sup> Act 130 of 1998

and its intentions. Proponents of the legislation argued that it was essential to address the gendered exploitation that labour migrants to South Africa face and protect the thousands of women who would be trafficked into the country ahead of the 2010 FIFA Football World Cup (Jeffrey, 2015, Gould & Fick, 2008, and Richter, Luchters, Ndlovu, Temmerman, & Chersich, 2012). However, the Act was not passed before the FIFA World Cup, after which the process slowed down considerably. In the end, the Act took 1945 days to pass from its introduction into Parliament on 15 March 2010, to its implementation on 9 August 2015. This is substantially longer than the average amount of time that it has taken for Acts passed between 2006 and 2015 to undergo this process, namely, 410 days ('How Long Does It Take To Pass And Enact Bills?', PMG, n.d.). There are a number of possible explanations for this (some of which are elaborated in the research findings), which raise interesting questions about the gendered and protective nature of the policy being proposed, the role of coalitions from outside government, the use of evidence by policy makers, and the role of international pressures. We explore these in greater detail in the results section.

## **Aims of the research**

The broader aim of this project was to better understand how policy is made and influenced in South Africa. The development of counter-trafficking legislation in South Africa has raised a number of questions that make it a valuable case study for trying to understand the policy process. Primarily, it was passed fairly recently and the key stakeholders involved in its development are therefore traceable, making accurate documentation of the policy process possible. It is, as a result, valuable for capturing the processes that take place when policy is developed, the nature of the debates that inform policy, and the role players that effect change. In addition, it is a useful case study for understanding policy making about causes that are typically unpopular. In South Africa protection of migrant rights has typically lacked popular support and most policy making in this field has been increasingly restrictive and exclusionary.

Connected to this, there are limits to the generalizability of these findings. Most notably, from a migration policy perspective, the Trafficking Act falls within the more progressive and protection oriented types of migration law as opposed to, for example, the Immigration Act of 2002 and its subsequent amendments, which are far more focused on security and restricting mobility. Thus, this analysis cannot be easily transferred to all migration policy, most of which is focused on migration control and security, rather than the protection of migrants. Nevertheless, with this proviso, an analysis of the Trafficking Act can provide a first attempt at addressing the dearth of information from the global South on how and why policy gets made.

This working paper provides an overview of the research findings with an emphasis on how the processes of institutionalization and implementation (Betts & Orchard, 2014) interact around an issue, such as trafficking. In doing so, the study identifies key features of policy change, some of which are more general and will be used in developing a more generalizable understanding of how policy change is

accomplished in South Africa, and others which are quite specific to the Trafficking in Persons Act.

The more general objectives of the project were to identify:

- The applicability of existing policy process frameworks for South Africa;
- The institutions that impact on policy development;
- The role of lobby groups in shaping the form and nature of policy; and
- The knowledge, ideas and debates that dominated the deliberations.

As such, the main research questions were:

- Who were the key actors involved in the policy process and what were their respective roles?
- What institutional mechanisms were mobilised by policy actors to achieve their goals and how successful were these attempts at mobilisation?
- What were the competing policy models animating policy actors and where did they originate from?
- Whose interests did the passing of the Act serve in the end and what are the perceptions of the different stakeholders about its final form?
- What is the Act's gendered impact? and
- What are the connections between the policy process and its implementation?

This working paper presents an analysis of our findings in relation to these questions. It starts with a short literature review proceeded by a section on methodology and ethics. This is followed by a stakeholder analysis, an analysis of the research findings, and conclusion.

## **Background to the Prevention and Combatting of Trafficking in Persons Act, 2013**

Concern over trafficking has a long history, particularly in the European context where it originated as both a political and a moral concern over the 'white slave trade' of women in the early 20<sup>th</sup> century (see for example, Allain, 2013; Zheng, 2010). These early concerns around trafficking arose at a time when, due to developments in rail travel, women experienced increasing opportunities for travel. As women became more mobile outside of the home, fears were expressed that their chastity may be compromised (Zheng, 2010; Allain, 2013; Goodey, 2008). Thus, even in the earliest debates on trafficking, the concern was driven by the anxiety over what was seen to be the inappropriate mobility of women and the associated problems of morality. It is, therefore, unsurprising that one of the critiques of the anti-trafficking movement, both then and in contemporary debates, has been its 'Victorian paternalism' (Allain, 2013 pp. 340–341). As a consequence, concern over trafficking is often conceptualised as a moral panic (see, for example Allain, 2013 and Bonthuys, 2012 for example). Moral panics are described by Stan Cohen, who first theorized the phenomenon in 1973, as occurring when:

[A] condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylised and stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or (more often) resorted to; the condition then disappears, submerges or deteriorates and becomes more visible. Sometimes the object of the panic is quite novel and at other times it is something which has been in existence long enough, but suddenly appears in the limelight. Sometimes the panic passes over and is forgotten, except in folklore and collective memory; at other times it has more serious and long-lasting repercussions and might produce such changes as those in legal and social policy or even in the way the society conceives itself (Cohen, 1980, p. 9).

The more recent concern around trafficking in persons can be traced to the late 1980s and 1990s, when the phenomenon received renewed attention. Several authors have argued that this re-emergence of trafficking was once again a moral panic in response to a new group of people being more able to move, that is, Germans and other Eastern Europeans following the fall of the Berlin Wall in 1989. It was in the context of this growing concern with the increasingly porous borders of the post-Cold War period, transnational organized crime, and the inability to control immigration that trafficking in persons took the fore as a security concern of nation states (Goodey, 2008, p. 422; O'Connell Davidson, 2015). Whilst there may well be other factors involved, this literature suggests that the intersection of gendered moral anxieties over the movement of people deemed undesirable, once more shaped the renewal of interest in trafficking.

This reemergence of the debates on trafficking coincided with the release of Kevin Bales' *Disposable people: New slavery in the global economy* (1999), in which Bales claims that there were 27 million people living in slave like conditions in the modern world. This figure continues to be used by those in the anti-trafficking movement (interview with Abok & Abok, founders and directors of the Media Campaign Against Human Trafficking, 2015) nearly 20 years later. We consider a few of the reasons for this globalization of the concern over trafficking in more detail below. However, at this point, it is useful to note that the role of the mass media, the concerns around morality, and the threat trafficking poses to 'societal values and interests' (Cohen, 1980, p. 9) are all elements of the contemporary focus on trafficking in South Africa. However, our findings highlight that these concerns were by no means sufficient to have policy passed nor were they uncontested.

### ***The globalization of trafficking***

Since the reemergence of trafficking debates, the issue has become increasingly globalized. There were several factors that contributed to the globalization of concern and norms about trafficking. Firstly, globalization of trafficking took place through its discovery in diverse contexts leading to the claim by the early 2000s that no country was believed to be free of trafficking. For example, the book *The Whistleblower*, which documents a U.S. police officer posted to Bosnia and Herzegovina and her crusade to have the sexual exploitation of women by U.S. army and private security acknowledged, was cited by some respondents as a book that gave impetus to the globalization of concerns about trafficking. Through publications such as this one, as well as the Bales report described above, trafficking was seen to be something that was found throughout the world.

In addition, concern over trafficking led the U.S. Congress to pass the Trafficking Victims Protection Act (TVPA), in 2000. This Act requires the Department of State to annually publish a Trafficking in Persons Report (TIP Report) that assesses how countries across the world are responding to the problem of human trafficking. What is remarkable about this Act is that it requires that all countries be listed in terms of their responses to trafficking thus globalizing a U.S. piece of legislation. The TIP Reports essentially function as a naming and "shaming" mechanism through which the U.S. can put pressure on states to comply with international norms on trafficking or fail to join, what Risse et al. (1999) describe as the "liberal democratic states" "club".

According to the TIP Reports, a country can be assigned to one of four different tiers. Tier One means that the country is fully compliant with the minimum standards for eliminating trafficking as set out in the TVPA. The Tier Two list is populated with 'countries whose governments do not fully comply with the Trafficking Victims Protection Act's minimum standards but are making significant efforts to bring themselves into compliance with those standards' (U.S. Department of State, 2001, it should be noted that these definitions have not changed since 2001). In contrast, the Tier Two Watch List consists of countries where:

a) the *absolute number* of victims of severe forms of trafficking is very significant or is significantly increasing; b) there is a failure to provide evidence of *increasing efforts* to combat severe forms of trafficking in persons from the previous year, including increased investigations, prosecution, and convictions of trafficking crimes, increased assistance to victims, and decreasing evidence of complicity in severe forms of trafficking by government officials; or c) the determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take *additional steps over the next year* (U.S. Department of State, 2001).

Countries on the Tier Three list are those that do not fully comply with the minimum standards for eliminating trafficking as set out in the TVPA and are not making efforts to do so. Consequently, they can face funding restrictions and sanctions from the U.S. for their failure to address human trafficking. In this way, the U.S. legislation created an international monitoring system that further globalized the concern with human trafficking.

The third key way in which human trafficking became a global phenomenon was through the development and adoption of the Palermo Protocol<sup>2</sup> in 2000, the same year that the TVPA was passed. The Palermo Protocol outlines the international response to human trafficking and requires signatories to implement national trafficking legislation. Trafficking is defined in the Palermo Protocol as:

[T]he 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.

Within the Protocol, trafficking thus consists of three elements: *method* ('the recruitment, transportation, transfer, harbouring or receipt'), *means* (threat or use of force, other forms of coercion, abduction, fraud, deception, abuse of power, position of vulnerability, etc.) and be for the *purpose* of exploitation (Palermo Protocol, 2000).

To date 117 countries have signed the Palermo Protocol and 40 countries, including South Africa, have ratified it. Ratification puts pressure on these countries to develop counter trafficking legislation as well as carrying out other counter trafficking activities. The framing of trafficking in the Protocol also necessarily shapes the

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<sup>2</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (2000).

nature of the definition that countries can adopt, as we discuss further in the findings, and has thus contributed to a global consensus on the nature and forms of trafficking and its appropriate responses.

Although these are key examples of the globalization of trafficking, which are important in understanding South Africa's adoption of the Trafficking Act, there are also a number of South African specificities that shaped how and why trafficking became an important policy issue within the country which we turn to next.

### ***The South African context***

Whilst there is no doubt that global concerns around trafficking have influenced the development of South Africa's own legislation, it is important to note that international pressure was not sufficient for the development of the Act. As Betts & Orchard (2014) note, there is a significant gap between globalization of this nature and what they refer to as norm institutionalization, whereby there is a local implementation of a global norm. Here we consider some of the local influences on the trafficking Act.

South Africa's human rights framework and emphasis on gender equality meant that the state was likely to support the Palermo Protocol, which it did by both signing (on 14 December 2000) and later ratifying (in February 2004) it. Initial interest in trafficking began shortly after the Protocol was ratified, as local and international civil society organizations (see stakeholder analysis below for more detail) began to claim that they had evidence of trafficking in persons in South Africa (interview with Solomons, 2015). Nevertheless, trafficking really only gained widespread attention in the lead up to the 2010 FIFA World Cup. This was due to concerns raised amongst counter-trafficking advocacy organizations that the FIFA World Cup would result in large numbers of women being trafficked into South Africa for the purposes of sexual exploitation as the influx of tourists created an increased demand for sex workers (Bonthuys, 2012; Richter et al., 2012).

Whilst the results section of this report details these contexts more closely, it is important to note that the South African Act has a very similar definition of trafficking to the Palermo Protocol. The only difference is that it extends the definition to include some forms of illegal adoption of a child and forced marriage<sup>3</sup>. Furthermore, while the Protocol and the Act both address the trafficking of people for labour, the removal of organs, and sexual exploitation, the focus of both the international community and the South African anti-trafficking community has been on trafficking for the purposes of sexual exploitation (Brennan, 2008; Goodey, 2008). This is evident through the persistent use of images of young women who appear

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<sup>3</sup> There are no available statistics on the extent of illegal adoption or forced marriage in South Africa. The section below details how perceptions such as these shaped the Trafficking Act even in the absence of evidence.



naked and chained in anti-trafficking awareness campaigns (see for example, the MeCAHT *Treasure me* campaign<sup>4</sup>).

Another key moment in the development of the South African Trafficking Act was South Africa's demotion in 2005 to the Tier Two Watch List in the U.S. TIP Report. This meant that South Africa was considered, by the U.S., to be taking inadequate steps to counter trafficking. Demotion to Tier Three may have held both economic and political ramifications for South Africa, as the country is one of the largest receivers of PEPFAR<sup>5</sup> aid. If a country is demoted to Tier Three in the report, the State Department recommend, to the President, that sanctions, which include the suspension of aid, are put in place to force the country to respond to trafficking. This is in accordance with the TVPA which states that it is:

[T]he policy of the United States not to provide non-humanitarian, nontrade-related foreign assistance to any government that (1) does not comply with minimum standards for the elimination of trafficking; and (2) is not making significant efforts to bring itself into compliance with such standards.

Whether or not sanctions are put in place is, however, left to the discretion of the President who is likely to waive the sanctions if he feels that the restrictions will put the population in question at more risk of trafficking (Interview with Wesen and Suo, 2015). Although Wesen and Suo, the former being the Human Rights Officer for the U.S. in South Africa at the time and the latter working for the U.S. State Department, questioned whether threat of sanctions had had any tangible effect on the passing of the Act, all three members of Parliament and most of the civil society organizations interviewed noted that such a threat was part of the context that shaped the development of the South African Act.

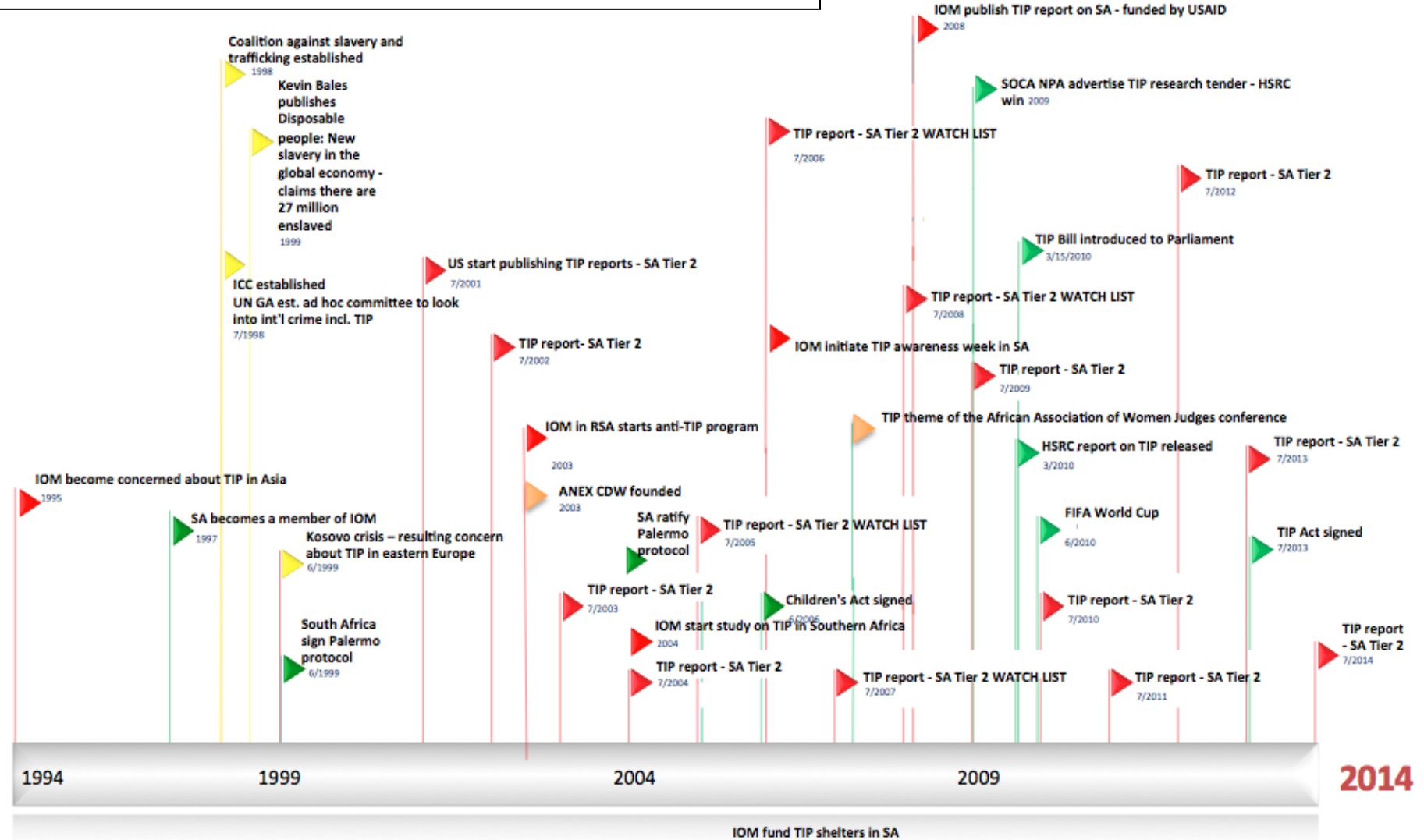
The timeline below gives a more detailed overview of some of the influencing events described above:

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<sup>4</sup> <http://www.mecahtinternational.org/>

<sup>5</sup> The U.S. President's Emergency Plan for AIDs relief of which South Africa is one of the biggest recipients, having received \$4.5 billion from the fund over the last ten years (Interview with Wesen and Suo, Political Officer for Human Rights at the U.S. Embassy in Pretoria and Supervisory Foreign Affairs Officer at the Department of State's Office to Monitor and Combat Trafficking in Persons, responsible for Southern Africa respectively, 2015).

Time line of key events influencing the South African Trafficking Act



A number of key ideas have emerged that have shaped the nature and form of counter trafficking policy globally and in South Africa. The following discussion provides a schematic outline of these debates in order to contextualize the forms that the South African trafficking Act took.

Firstly, the link between sex work and trafficking has often been made in complex and controversial ways. The focus on sex work is due, in some respects, to the fact that the early concern around white slavery was also focused on women and prostitution, and that the first international policy on trafficking was the 1933 *International Convention for the Suppression of the Traffic in Women of Full Age*. No doubt, it is also due to the emphasis of the second Bush administration on defining sex work as trafficking (Brennan, 2008; Zheng, 2010). As Brennan writes, 'the broader category of labor trafficking has been subsumed by the significant component of sex trafficking...[and] voluntary sexual exchanges between adults for money have been described as sex trafficking' (2008, pp. 49). These two connotations dovetailed with the Bush administration's decision to grant PEPFAR and USAID funding only to initiatives that do not support the decriminalization or legalization of sex work (Brennan, 2008). This did not change with the change in administration and it remains a requirement for all PEPFAR recipients that they do not support the decriminalization of sex work.

In South Africa, this conflation of trafficking and sex work has been equally evident. Most notably, the attention to trafficking prior to the FIFA World Cup coincided with a moment where there was extensive lobbying for the decriminalization of sex work. Whilst a full discussion of this decriminalization lobby is beyond the scope of this working paper, it had the effect of framing the debate, often rather simplistically, as one fought over whether or not sex workers can choose to sell sex or are only ever forced into it. Sidestepping this debate however, what is clear is that sex work often pays better than other low or semi-skilled labour that is available to migrant women in South Africa (Bonhuys, 2012; Gould & Fick, 2008). For example, some research has shown that even women with a tertiary education can earn 1.7 times as much selling sex than they can in other forms of employment (Gould & Fick, 2008). Thus, in a country such as South Africa, with high levels of structural unemployment, the notion of choice is rather more complex than that which has been portrayed in the media and in advocacy around trafficking.

Secondly, trafficking is frequently conflated with smuggling. Goodey writes that 'in legal terms, smuggling becomes trafficking once a person who is being smuggled experiences exploitation at any point from recruitment through to arrival at their destination' (2008, pp. 422). However, the two terms are often conflated, especially in South Africa. Indeed, policy responses, tended to reflect a complete overlap and 'place illegal immigration, human smuggling and human trafficking together under the 'migration-crime-security' nexus' (Goodey, 2008, pp. 422–432). In South Africa, there is no doubt that smuggling is pervasive on the land borders. A report by the IOM (De Sas Kropiwnicki, 2010), for example, which set out to research trafficking on the Zimbabwe South Africa border, noted many instances of extreme exploitation associated with smuggling that nevertheless fell short of the legal definition of trafficking. Because trafficking has a three-part burden – recruitment, movement, and

control – a migrant who knowingly pays a smuggler to take them across the board, but who is then sexually assaulted by the smuggler before making their way further into South Africa, is not a victim of trafficking. While the sexual abuse and the smuggling are both crimes, neither is sufficient to make this an instance of trafficking.

Perhaps the most vociferous debate around the Trafficking Act, however, was over the evidence of trafficking in South Africa. There have been two primary concerns about the evidence used to develop counter trafficking interventions. Firstly, several researchers (see for example, Allain, 2013, p. 359) note that ‘the dominant anti-trafficking discourse is not evidence-based but grounded in the construction of particular mythology of trafficking’. Thus, a number of unsubstantiated claims have been made about what trafficking is and who the victims and perpetrators of this crime are (Allain, 2013, p. 359). Secondly, information from contexts very different to South Africa appeared to be restated as South African evidence. This was particularly evident around the World Cup where the numbers of trafficking victims that were expected in South Africa had been simply reproduced from the numbers of expected victims in Germany even though the evidence suggested that the trafficking victims during the German World Cup had not materialized (Richter et al., 2012).

Some examples from the ideas produced on trafficking in South Africa are illustrative of these problems. One of the original pieces of research on trafficking in South Africa, commissioned by the National Prosecuting Authority and undertaken by the Human Sciences Research Council (HSRC) has been heavily criticized since its publication (see Richter, Gould, & Palmary, 2010), for its reliance on incorrect sensationalized representations of trafficking victims and perpetrators. For example, amongst other things, the report claimed that:

[R]espondents believe that victims are either recruited by cult members or purchased by criminal syndicates that specialize in human trafficking: these are said to be mostly Nigerian. Alternatively, satanic cults will kidnap victims often from rural areas. Other targets are street children and prostitutes ... If the ritualistic killing requires a man, gay men in bars are targeted and sedated to overcome physical resistance (Chandré Gould, Richter, & Palmary, 2010).

Whilst such stereotyping is alarming, other kinds of evidence have been adopted and have found their way into policy processes that are equally untested. For example, one of the earliest pieces of South African research produced by the IOM made the following claim:

As male refugees encounter unemployment and xenophobia in South Africa, some choose to recruit female relatives from their countries of origin to South Africa. These women are usually 25 years and older, married and have children. Individual refugee traffickers are assisted by ethnically-based syndicates in delivering a recruiting letter to the victim in her country of origin, escorting her to South Africa, and sexually assaulting her as an initiation to sex work should she resist upon arrival. The refugee trafficker takes the earnings the woman receives as a sex worker and, to protect his investment, he assists

her in applying for refugee status to prevent deportation if police detain her (Martens, Pieczkowski, & van Vuuren-Smyth, 2003, p. 7).

Whilst there are no sources for this claim, it was later used in a speech by the Chief Justice in South Africa to also raise awareness on trafficking<sup>6</sup>. Later it was reprinted in the Mail and Guardian newspaper<sup>7</sup> and then appeared in the abovementioned HSRC report on trafficking in the following form:

Evidence suggests that the diaspora communities are often channels for the trafficking of victims to South Africa (Allais et. al., 2010, p.15).

The sources are all self-referential: the claim was unreferenced in the IOM pamphlet and all others refer to this pamphlet. It was later reproduced in the South African Law Reform Commission Discussion document which was the precursor to the development of the South African Trafficking Act.

Similar concerns exist regarding claims made in the TIP Reports. Claims made in these reports are by-and-large unreferenced, and no indication is given as to who informs the claims made by the State Department. This concern is not unique to the South Africa section of the report, and even prompted an investigation by the U.S. Government Accountability Office in 2006, which called on the State Department to be more transparent about their methodology and sources (United States Government Accountability Office, 2006). Whilst these concerns are important, one of the limitations of the TIP Reports is undoubtedly that countries, including South Africa, have limited information to relay to the State Department due to problematic reporting mechanisms. As such, the State Department is often focused to rely on anecdotal evidence from civil society (Interview with Wesen and Suo, 2015).

Such problems around data are not limited to South Africa. The United Kingdom, for example, has had similar problems regarding research evidence. Allain (2013) reports that the results of an anti-trafficking operation in the United Kingdom, which 'failed to find a single person who had forced anybody into prostitution' led to claims that there were 18 000 victims of trafficking in the UK (p.359). In addition, the *Guardian*, a United Kingdom newspaper, found that an academic study had doubled, and then increased another ten-fold the number of victims of trafficking the authors believed to be in the U.K. after having identified 71 actual victims (Allain, 2013, p. 359). The misuse of data and use of bad data is particularly concerning as it is often this bad data which is used to inform policy, a concern which will be discussed further in the policy analysis section of this report.

Finally, there have been a number of ideological controversies surrounding trafficking, most notably, the rather curious alliance of some forms of feminist and religious

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<sup>6</sup> He claimed that: 'Refugees from other African countries already in South Africa often arrange for close female relatives to join them. Once these women receive asylum-seeker status, their male relatives force them into prostitution' see:

<http://cjei.org/publications/IAWJ%20Conference/Trafficking%20Speech%20Chief%20Justice.doc>

<sup>7</sup> <http://mg.co.za/article/2007-10-19-human-trafficking-as-evil-slave-trade-of-the-past>.

activists. Indeed, as our results will discuss, much of the anti-trafficking movement is rooted in religious conviction (Allain, 2013). In the United States, a similarly unusual alliance between the religious right, who believe sex work to be immoral, and some within the feminist movement who view all sex work as exploitative, exerted considerable influence in getting the *William Wilberforce Victims of Trafficking and Violence Protection Act* (2000) passed (Brennan, 2008; Zheng, 2010).

This section suggests that a number of local factors - the looming FIFA World Cup, the gradual formation of counter-trafficking organizations, and the commissioning of research into human trafficking - coincided with a number of international pressures, from the United States and from the fact that South Africa had ratified the Palermo Protocol- to create a context conducive to establishing the Trafficking Act. In the results section we consider more specifically the factors that determined the nature and form that this influence took and how this broad context played out in the making of the Trafficking Act.

## **Methodology and Ethics**

Given that little is known about policy processes in South Africa, this project has been exploratory in nature. Through qualitative methods, we have attempted to map out the various roles played by key actors and organizations in influencing the Trafficking in Persons Act, both in its formation and in its implementation. Below we describe the data collection methods.

### ***Minutes of Parliamentary discussions***

The Parliamentary Monitoring Group makes available all minutes of Parliamentary discussions online. Every Bill deliberated by Parliament, whether it is passed or not, is listed alongside the minutes from any plenary or Committee discussion on the Bill. The TIP Act was discussed by the Committee for Justice and Correctional Services between March 2010 and February 2013, when the Bill was ready to be passed. The minutes were summarized, analyzed, and used to assess the following components of the research question: who were the actors in the process and what roles did they play; how successful were different groups at lobbying the policy process; and what were the competing models of counter trafficking being proposed and by whom.

### ***Stakeholder mapping***

The Parliamentary minutes helped us to identify an initial list of individuals and organizations who were involved in the process, and with whom we should conduct key informant interviews. Once we had started contacting and interviewing those from this initial list, snowball sampling was used as key informants referred us to others who had been or were currently involved in trafficking work. We were essentially able to create a map of stakeholders who were involved in the process and their links to one another. This allowed us to isolate who the key actors were in the process and what institutional mechanisms they used to mobilize policymakers. The stakeholder map was constantly updated as the key informant interviews generated new information about stakeholders.

### ***Key informant interviews***

Key informants were understood to be anyone who was involved in the deliberations on the Bill, advocacy around trafficking in persons in South Africa between 2000 and 2015, and individuals involved in the various ways in which the Act is being implemented.

We were able to conduct 22 interviews, including interviews with Parliamentarians, civil servants, and civil society. As will be elaborated on in the results section, we identified two competing coalitions within the trafficking in persons policy subsystem – the Rights-Based Coalition and the Anti-Trafficking Coalition. Because this research

was exploratory in nature, key informant interviews were able to provide valuable data that was both descriptive and explanatory (Hesse-Biber & Leavy, 2011).

For the majority of interviews, the structure was formal, and semi-structured interview guides were used. Hesse-Biber and Leavy claim that semi-structured interviews allow for data collection and analysis to happen simultaneously (2011) something which we found to be true as we were able to respond to the informants during the interviews, and found ourselves constantly updating the interview guides. Whilst many of the participants provided rich material, some interviews were done under difficult circumstances, for example when respondents had very little time or were trying to run a children's shelter whilst conducting the interview.

### ***Analysis of data***

All key informant interviews were transcribed. The key informant interviews as well as the Parliamentary minutes were analyzed using thematic analysis. The first step was open coding, where we identified key themes in the data. We then used pattern coding to further develop these themes and test their explanatory power. In this second phase of analysis we 'tested' to what extent the themes identified in phase one could answer our research questions and offer explanations rather than descriptions (see Patton, 2002). We used triangulation; particularly comparing the findings from the minutes of the Parliamentary discussions with those of the key informant interviews. Where contradictions were found they were often tested in later interviews. For example, there was some disagreement between two of the members of the Parliamentary committee on the impact that NGOs had had on the policy. This was therefore an issue that we followed up intensively in interviews with NGOs and other Parliamentary members until we felt able to make a valid judgment with regards to the impact that NGOs had had on the process.

In the final phase of analysis we compared and contrasted our findings with both the 3 I's framework for policy analysis (Gauvin, 2014), and the Action Coalition Framework (Jenkins-Smith, Nohrstedt, Weible, & Sabatier, 2014). As will be discussed later, neither of these frameworks captured the nuances of the policy making process we observed completely. However, both frameworks had valuable points of departure for the analysis.

As Patton writes, the perspectives of informants 'are necessarily limited, selective, and biased' (2002, p. 321), and we found this to be particularly obvious in our interviews with Members of Parliament who, for example, all commented on how long it had been since they had been involved in the deliberations on the Bill, and as such were not sure that they would remember specific details (Jeffrey, 2015; Schafer, 2015). This made triangulation of sources all the more important. Because trafficking is not viewed by the general public as a contentious issue – no one claimed to be 'pro-trafficking' – and the Act had already been passed, we were not particularly concerned that the Parliamentarians interviewed would be trying to make a political statement about trafficking.



### ***Ethical considerations***

Prior to conducting any of the interviews, participants were provided with an information sheet, asked whether they had any questions about the research project, and asked to sign an informed consent form if they were willing to participate in the research. They were also asked to sign a consent form for audio recording of the interviews.

In particular, we explained that confidentiality was probably not possible. We therefore asked whether they could be identified by name and/or occupation. Only two of the civil servants from the Department of Social Development asked not to be identified as they were relatively critical of the responses of other government departments to trafficking.

In addition, we were conscious during the interviews of the upcoming municipal election in 2016. This has created a context of fairly strong political conflict and at times it felt that the respondents were more concerned with critiquing other parties than answering the questions presented. However, as far as possible we tried to get them to focus on the legislative developments we were concerned about.

## Results

Analysing policy processes developed as a method of enquiry in politics in the mid-20<sup>th</sup> century. Initially theories focused on either institutions or networks, or where based on rational choice theory, and the idea that policy makers were rational agents (Surel, 2000). By the mid-1980s, however, far more sophisticated theories were emerging which were able to account for multiple factors and variables. Referred to as ‘cognitive and normative frames’, these theories emphasise ‘the influence of ideas, general precepts and representations, over and above social evolution and state action...based on the belief that cognitive and normative elements play an important role in how actors understand and explain the world’ (Surel, 2000, p. 495). Surel shows that what the three of the best developed frameworks of this kind – Hall’s policy paradigms, Sabatier and Jenkins-Smith’s Advocacy Coalition Framework, and Jobert and Muller’s *référentiel* – have in common - ‘is the goal of establishing the importance of the dynamics of the social construction of reality in the shaping of historically specific and socially legitimate frames and practices’ (Surel, 2000, p. 495).

We ultimately settled on analyzing the data using the 3 I-s framework, which - functioning as a ‘theoretical checklist’ (Gauvin, 2014) - was best placed to make sense of policy making in South Africa. Importantly, the use of the 3 I’s did not preclude the use of other theories and frameworks. Through exploring the 3 I’s – ideas, institutions, and interests – we were able to include aspects of the Advocacy Coalition Framework (ACF), theories around norms socialisation and implementation, and moral panics. The 3-Is therefore formed an important basis for the framing of this research, on top of which we could explore other ideas and theories without being bound to more rigid frameworks.

Our primary concern with the use of the ACF was that its multiple hypotheses and ad hoc explanations predetermined the research focus. Given the dearth of research into policy change outside of the global North we sought an approach that was less prescriptive and more exploratory and descriptive. Nevertheless, some of these hypotheses of the ACF proved useful in conceptualising what the various ideas, institutions, and interests were in the policy process. We did for example make use of ‘Policy Change Hypothesis 1: Significant perturbations external to the subsystem, a significant perturbation internal to the subsystem, policy-oriented learning, negotiated agreement, or some combination thereof are necessary, but not sufficient, sources of change in the policy core attributes of a governmental program’ (p.203). This hypothesis allowed us to analyse internal and external pressures that led to the Act as well as the consensus that was reached by the different coalitions. As such, the use of other frameworks such as ACF strengthened our ability to describe the ideas, institutions, and interests (3-Is) in the three policy processes.

The results section starts with a stakeholder analysis – a brief analysis of the various individuals and organisations involved in the two coalitions, followed by an analysis of our findings using the 3-Is framework.

## ***Stakeholder analysis***

### ***The anti-trafficking coalition***

The anti-trafficking coalition – broadly defined here as those actors who believe trafficking to be an urgent and prevalent issue in South Africa – is made up of the following organizations and individuals.

**National Freedom Network (NFN)**, an umbrella organization and coordinating structure for non-governmental organizations (NGOs) within the coalition. The NFN was launched in May 2011 and is currently run by Diane Wilkinson who volunteers full time for the organization. She described the NFN as being:

...really about networking. It's about connecting people, it's about collaboration, encouraging collaboration, it's about sharing, so sharing best practices, sharing resources, sharing information. So we really are, I guess, in a way the sort of central connection point for the field. Not that we forced that on anyone by any means. But here, we are available when people want to use us. We have been really amazed at how many people have come on board since this whole thing started up. So just in the past four years how much it has grown from starting off with sort of twenty people to a mailing list of over six hundred (Wilkinson, 2015).

Wilkinson is both the National Network Coordinator for the NFN as well as the Gauteng Provincial Coordinator. There are seven provincial NFN structures, all of which appear to be coordinated by individuals who run their own anti-trafficking organization as well. For example, the Western Cape Provincial Coordinator is Katie Modrau, who heads the A21 campaign in South Africa, and the Eastern Cape coordinator is Margaret Stafford who, for many years, ran the Salvation Army's anti-trafficking unit. The NFN has been operating since 2011 but only registered as a Non-Profit Organization in 2015.

Wilkinson also sits on the Gauteng Anti-Trafficking Task Team that the National Prosecuting Authority (NPA) coordinates. The Task Team, which is meant to operate in every province of South Africa, involves not only the NPA, but also the International Organization for Migration (IOM), and the Department for Social Development (DSD). This Task Team is expected to do an initial assessment of any potential victim of trafficking who is identified.

**A21**, which is shorthand for Abolishing Injustice in the 21<sup>st</sup> Century, was started by Christine Caine, the CEO of Equip and Empower Ministries, in 2008. An international organization, their South African offices opened in March 2013 and are based in Cape Town. As mentioned earlier, Katie Modrau, who runs these offices is also the Western Cape Provincial Coordinator of the National Freedom Network. She also sits on the Western Cape Trafficking Task Team, and reports good working relationships with

IOM, ANEX, and Molo Songololo (a children's rights organization based in Cape Town). The primary focus of A21 is awareness raising (Modrau, 2015).

This is also the primary focus of **the Media Campaign Against Human Trafficking** (MeCAHT). Started in Nigeria by Anne and Alex Abok, the missionary couple has recently started the South African branch of their organization. As with NFN and A21, they undertake this as volunteer work, receiving only their stipends from Youth With A Mission, a Christian missionary organization (Abok & Abok, 2015).

**STOP: Stop Trafficking of People** is an organization founded by Corinne Sandenberg. Unlike the other organizations, STOP was involved in the deliberations of the Trafficking Act. This was a time during which Sandenberg claimed 'civil society were very pushy, we were violently pushy' (Sandenberg, 2015). At this time, Sandenberg, and the organization, were based in the Western Cape. She has however moved to Limpopo, while it appears that the organization has remained in the Western Cape.

**Molo Songololo** is a Cape Town based children's rights organization. Founded in 1979, the organization has a reputation for its work on advocating for the wellbeing of children in South Africa (Solomons, 2015). The idea behind the organization, according to Solomons, the director, 'was to breakdown racial barriers amongst children, to provide opportunity for the children to interact, to share experiences and then to learn from each other' (Solomons, 2015). Molo Songololo's interest in trafficking stems from their interest in the exploitation of children and led them to make submissions to Parliament on the Act.

**ANEX- CDW** was one of the first anti-trafficking organizations founded in South Africa in 2003, and the founding member of the Western Cape Anti-Trafficking Forum, one of the first provincial task teams on trafficking. Their focus is specifically on internal child trafficking, particularly from the Karoo to Cape Town. Although the organization is currently struggling to find funding and is understaffed, they singlehandedly run the national anti-trafficking hotline.

Other important members of this coalition are also the **International Organization for Migration** (IOM) and the **United States Embassy's Human Rights Office**. Trafficking has been a central focus of the IOM since the mid-90s, and the organization currently sits on the various Trafficking Task Teams in the provinces in which they have a presence – Gauteng, the Western Cape, and Limpopo. The United States Embassy's Human Rights Office, in conjunction with their colleagues in the United States, writes the entry on South Africa for the annual *Trafficking in Persons Report*, which the Department of State releases.

Whilst all members within the anti-trafficking coalition agree on central issues, like for example the trafficking occurs on a wide scale within South Africa, there remained tensions amongst the members. A few of the CSOs found the information held in the TIP Reports problematic for example, claiming that they were unsure of where it had come from (Wilkinson, 2015). Others voiced concern over the ad hoc mechanisms that

the movement has put in place to respond to incidences of trafficking, claiming that they worked slowly and inefficiently (Smit, 2016).

### ***The rights-based coalition***

The second coalition within the trafficking subsystem was the rights-based coalition. The organizations making up this coalition are not focused on trafficking per se, but are focused more broadly on human rights issues. They typically provided a more critical response to trafficking. They include:

**Lawyers for Human Rights (LHR)** and the **Legal Resources Centre (LRC)**, both of which are public interest legal organizations that provide legal expertise to communities and groups of South Africans who normally would not be able to afford the cost of legal aid. Although neither organization would advocate against the Trafficking in Persons Act, both organizations are experienced in engaging law-makers and both expressed concerns around some of the framing of the trafficking debates.

The **Commission for Gender Equality (CGE)** is an organization that has its basis in Chapter 9, Section 187 of South Africa's post-apartheid Constitution. Set up specifically to advocate for the rights of women and against sexism, like LHR and LRC, the organization is rights-based. However, when interviewed, the organization was in favour of the Trafficking Act and believed trafficking to be occurring on a large scale in South Africa.

Three organizations who were focused on sex worker rights contributed significantly to the framing of the Trafficking debate. They argued, quite emphatically, that the Trafficking in Persons Act would increase the vulnerability and precarity of sex workers, particularly migrant sex workers, and campaigned for the decriminalization of sex work.

These organizations - **SWEAT: Sex Worker Education and Advocacy Taskforce**, **Sisonke Sex Worker Movement**, and **Sonke Gender Justice** advocate for the decriminalization of sex work using the idea that sex workers' have basic human rights and the criminalization of their source of income infringes on these rights. Although sex work and sex workers have never been the sole focus of Sonke, the organization has issued strong statements condemning policy in the name of trafficking which negatively affects sex workers (see for example de Gruchy, Vearey, Richter, & Quirk, 2015). All three of these organizations have argued that the Trafficking Act will do little to address the very real exploitation and abuse that migrants and sex workers face in South Africa.

### ***Government stakeholders***

From the minutes of the Parliamentary Committee for Justice and Correctional Services meetings it became apparent that three of the main Parliamentarians involved in the committee around the time that the Bill was being deliberated were

John Jeffrey of the African National Congress (ANC), Debbie Schafer of the Democratic Alliance (DA), and Steven Swart of the African Christian Democratic Party (ACDP). A detailed explanation of the Parliamentary process and the role of the Committee will be provided in the section on *Institutions*.

**Jeffrey** is now Deputy Minister of the Department of Justice and Correctional Services. He was not completely convinced that trafficking in persons was or is a big problem in South Africa, saying for example, 'obviously NGOs working in the sector have an interest in inflating the figures because then you get funding' and that 'migrant workers from Zimbabwe who are working for a pittance through a labour broker, I would doubt whether they are being trafficked because they are desperate for the money'. He did, however, see passing the Act as a responsibility that South Africa had as part of the international community and believed it was in the best interest of South Africa's reputation.

**Schafer** is no longer a Parliamentarian, working in the Western Cape's provincial executive instead. She remembered little of the deliberations around the Bill, but, in a similar vein to Jeffrey, defended the Act as necessary for South Africa's international reputation.

**Swart**, from a Christian, minority party, was perhaps the most engaged of the Parliamentarians when it came to the anti-trafficking coalition. He was the only Member of Parliament interviewed who referred to trafficking in persons as modern day slavery and appeared genuinely concerned about the legislation and the fact that it had, at this stage, yet to be implemented. He made a point of being the longest serving member on the Committee, and had strong investments in the Act being passed.

While there were many more government stakeholders involved in the process, their role was either more peripheral, or they were not forthcoming about being interviewed often claiming to need permission from managers who would not provide it. This was largely the case when individuals who were involved in the drafting of the Bill and subsequent Act, rather than merely its deliberation, were concerned. Of those who were interviewed, Swart was undoubtedly the most vocal about his support for the Act. The moral concerns expressed by the anti-trafficking coalition resonated with his position as a member of the ACDP. As such, he had a moral commitment to the passing of the Act. Other Parliamentarians were concerned with passing the Act, but were frequently ambivalent about its value (as discussed further below). They were also more likely to question the evidence and motives of NGOs. Nevertheless, although Schaffer and Jeffrey raised concerns about evidence and prevalence where Swart did not, there was no sense of there being any alternative to the Act, given the South Africa was signatory to the Palermo Protocol.

With these stakeholders in mind, we will now discuss how they fit into an analysis of the data using the 3-Is framework.

## ***Institutions***

The draft Bill was drafted by the **South African Law Reform Commission (SALRC)**, who's mandate, through the South African Law Reform Commission Act of 1973 is to conduct research on all aspects of law in South Africa, ensuring that there are no contradictions or anomalies in law, repealing outdated laws, and making new law. Any member of the public can refer an issue to the SALRC, however, often requests are sent to the SALRC by Members of Parliament (MPs). The SALRC then develop an Issue Brief, which is a document intended to elicit public comment on the matter. After this, a discussion document is developed which is more detailed and presents the findings of the SALRC research. The public is invited to comment on these as a way of testing public opinion. Most discussion documents contain a draft Bill that is then developed into the Bill, and ultimately an Act of Parliament which is signed into law by the President.

Between being introduced to and passed by Parliament on the 13 June 2012, the Bill was deliberated on by the Committee for Justice and Correctional Services who received submissions on the Bill as well as heard presentations from various parties (see *Ideas* below for detail). After being passed by Parliament, the now Act was sent to the President who signed it, after which it became an Act on 29 July 2013.

While this process took just over three years – 1201 days to be exact, significantly more time than the average of 149 days ('How Long Does It Take To Pass And Enact Bills? | PMG', n.d.), it would take an additional 741 days for the Act to become operational on 9 August 2015. Again, this took significantly longer than 161 days, which the Parliamentary Monitoring Group found to be the average time between the Act being passed and being signed into Law. The delay for the Trafficking Act was, at least in part, due to the fact that five government departments were mandated to draft regulations detailing how they would implement the Act (Swart, 2015). Nevertheless, several interviewees suggested that the delay was primarily caused by the Department of Home Affairs (DHA), who were concerned that undocumented immigrants would 'abuse' the Trafficking Act and protection that it offered to victims of trafficking to legalize their stay in South Africa (for example, Jeffrey, 2015). This concern was clear from the comments made by the DHA, captured in the Parliamentary minutes. However, it is possible that the delays by the DHA could have been due to general inefficiencies within the department, rather than a tension between the department's emphasis on limiting migration and the more protectionist mandate of the Trafficking Act. The fact that the Immigration Amendment Act also took much longer than average (2812 days from introduction to commencement) supports this theory.

Whilst there were many institutions involved in the policy process, the use of these institutions by various organizations and individuals interested in seeing the Act passed appears to have been minimal. The anti-trafficking coalition and international pressure groups were able to put trafficking in persons on the national agenda and to raise broad public awareness of trafficking. However, while the anti-trafficking coalition utilized the mechanisms available to them, presenting in Committee

deliberations and making submissions to Parliament, policy makers indicated that the contribution of civil society to this legislation was limited in comparison to the contribution of civil societies to other pieces of legislation. 'I can't remember anything really coming from NGOs in terms of an approach' was Jeffrey's response to the question (Interview Jeffrey, 2015). Analysis of the submissions made to Parliament shows that while definitions and the inclusion of phenomena like *ukuthwala*<sup>8</sup> and forced marriage in the Act were contested through civil society submissions, there was no disagreement over the fact that trafficking needed to be criminalized. This is not to suggest that there were not intense debates, and we turn to an analysis of some of these below.

### ***Ideas***

The primary idea, which was contested throughout this process, was whether or not trafficking was happening on a large scale in South Africa. This came down to two different sets of ideas that were, and remain, contested.

The first idea is in relation to evidence and its role in policy making. The temptation in this case is to claim that the Trafficking Act was not evidence based. However, this glosses over the fact that evidence was provided to Parliament about the extent of trafficking in South Africa. It was methodologically unsound evidence, and has been discredited, but the real questions which it raises are about the relationship between Parliament, policy, and evidence. In this instance we see a combination of very poor quality evidence that was somewhat uncritically accepted by both Parliament and the general public and its use, or misuse, in the formulation of policy. This evidence was primarily provided by, members of the anti-trafficking coalition and although frequently discredited became common sense knowledge.

All of the Parliamentarians that we interviewed expressed the difficult relationship policy makers have with evidence. Jeffrey was quite open about his concerns around trusting NGOs and the data that they provide stating that 'obviously NGOs working in the sector have an interest in inflating the figures because then you get funding.' The other Parliamentarians were less forceful about this, but both told anecdotes about how they had been in the embarrassing situation of having used evidence that they had been given but which was later shown to be false:

Well that's the problem and I mean when we had the World Cup, there were all these figures being bandied about and I did a press statement at one point and some journalist phoned me and said, "Where do you get these figures from? You're doing yourself a disservice by putting statements out like this because there's no backing up of it (Swart, 2015).

There is no criterion for evidence that is used in deliberations over legislation, and Parliamentarians are not expected to seek out evidence or research on

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<sup>8</sup> *Ukuthwala* is a form of abduction where a young man kidnaps a woman with the aim of pressuring her family into marriage negotiations.



issues under discussion, due to their own work loads and time constraints (Jeffrey, 2015; Swart, 2015). What evidence is used is serendipitous and depends on the energies that researchers' put into making their evidence available to policy makers and the general public. The limited use of, and passive way that, Parliament receives data means that debates around a topic (whether it is trafficking or any other) and policies can be developed using very selective research as guidance.

Bonthuys (2012) argues that use of bad data around trafficking is, if not a deliberate strategy, then certainly born out of the negligence of the media (and others) in South Africa. Regardless of the fact that there is no reliable data on the phenomenon, media reporting on trafficking has repeatedly made claim to large numbers of trafficking victims and sensational forms of violence thus contributing to the creation of a moral panic. However, in this research it was striking how aware the Parliamentarians were of the problems of poor data and the debates that were happening among research organizations about the quality of the data. This was reflected in some changes that were made to the Bill: for example, it was decided that there was insufficient evidence to make the claim in the Preamble that trafficking had been increasing in South Africa. Similarly, as late in the deliberations as 21 November 2012 members of the Committee were questioning why the Bill was being rushed through and why claims were being made about how lucrative trafficking is when there is no available data to support this. However, this did not result in Parliamentarians seeking out better data.

There are likely two intersecting reasons why, in spite of this awareness, Parliamentarians did not seek out better data. The first is that there is no data, particularly quantitative data, on trafficking in South Africa. As mentioned, even the U.S. Department of State TIPs Report has not provided adequate sources for its claims. As such, if the Committee had rejected available data, they would have been hard pressed to find data to guide their decision-making. The second reason is that the Parliamentary Committee does not have a budget for research and cannot, for example, invite researchers to present to the Committee. They are instead passive users of research and rely on researchers to volunteer their findings.

In spite of this general awareness of the problems of evidence, there was still an extensive reliance on myths and stereotypes amongst both the organizations working on trafficking and the policy makers. Thus whilst the absence of credible research was lamented it did not affect the development of the Act.

The second idea that was contested was whether or not women and children can choose to migrate or engage in sex work of their own volition, or whether they should always be regarded as victims of abuse, at least, or trafficking, at most. Many of those who were, and are, part of the anti-trafficking coalition do not believe sex work, in particular, to be an economic strategy that can be voluntarily engaged in by women

and are willing to employ myths around black magic, sex addiction, and drugs, in order to explain why a 'rescued' sex worker would prefer to return to sex work than be taken to a safe house. For example:

So we had to drive her back because we asked her if we could take her to safe house, so she said if there is no men there she can't stay there without sex. Now she's also addicted to sex you see, and it's drugs and sex. So she was just, "No, if there is no boyfriend that will be sleeping with me, then I am not going". At least she was honest.' (Interview with Abok & Abok, founders and directors of the Media Campaign Against Human Trafficking, 2015).

This is a direct contradiction to advocacy done by SWEAT and Sisonke Sex Worker Movement which argues that 'sex work is work', and migrants rights organizations and researchers who claim that women and children can choose to migrate of their own volition (Sex Workers Education & Advocacy Taskforce, 2016). This continues to be one of the greatest points of conflict between the two coalitions. This looks set to continue as trafficking is currently being invoked as a reason against the decriminalization of sex work (The Citizen, 2016).

Perhaps the most prevalent debate in the Parliamentary minutes, as well as in the key informant interviews, which was about the relationship between trafficking and cross border migration. This was particularly intriguing given that all interviewees reflected on the fact that trafficking internally within South Africa was probably a more prevalent issue than the trafficking of persons from outside of South Africa into the country<sup>9</sup>. The intensity of this debate is unsurprising given that the state, led by the DHA, have pursued particularly restrictive and anti-foreigner migration policy since 1994, and appear particularly concerned about the abuse of the asylum system by migrants (Department of Home Affairs, 2016; Peberdy, 2009; Segatti & Landau, 2011).

Similarly, when asked about what trafficking 'looks like' in South Africa, most respondents were quick to tell us that:

[I]f we really had to dig down and look at the you know the whole scope of it in South Africa I think labour trafficking would be a really big one. If you take into account the mines, the farms, you know all of them, all those kinds of industries (Wilkinson, 2015).

In spite of this awareness of internal migration as a risk, a review of the campaigns run by organizations to raise awareness about trafficking shows that the focus was almost extensively on cross border trafficking for the purposes of sexual exploitation.

Ideas around migration, security, and border control were raised throughout the policy making process with Parliamentarians and civil society organizations arguing that the criteria for trafficking ought to be narrowed to ensure that migrants who are

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<sup>9</sup> No clear indication of where this evidence comes from was given.

not victims of trafficking are not able to abuse the system (for example, Jeffrey, 2015) for the purposes of illegal migration or illegal activity. This tension between migration control and the Trafficking Act took two forms. Firstly, there was a constant concern that immigrants, who otherwise were not entitled to documentation or social services, may take advantage of the Trafficking Act:

Particularly in view of the possible benefits that they would receive. It was crucial for a full assessment to be done, because other people could say, well I'm a victim of trafficking and falsely say that, to get the benefits...' (Swart, 2015)

During the Committee meetings, the DHA was often in conflict with the rights-based coalition, as well as with other government departments, for example the NPA, who were arguing for more inclusive criterion for allowing victims of trafficking to stay in South Africa. The DHA felt quite strongly that this would simply open the system up to abuse as a way of becoming documented in South Africa.

Among some respondents, this tension between trafficking and migration took a second form, namely, trafficking was a catchall phrase when referring to non-nationals in South Africa who are undocumented or who were smuggled into the country:

We try to reach out to the illegal migrants. When they come to the country, they don't come as illegal...most of the ones we've been working with, the traffickers now. But they were trafficked you know. The traffickers got them valid visas. And they came into the country and their papers expired definitely and they couldn't renew it so that's when they became illegal (Abok & Abok, 2015).

For these respondents trafficking was intricately connected to undocumented migration and there was a lack of critical reflection unpacking the connections between undocumented migration, exploitation and trafficking.

### ***Interests***

Contrary to our expectations, our findings did not indicate that there was much financial or economic benefit to be gained from the passing of the Trafficking Act. However, we soon realized that this is not to say that there was nothing to gain from the passing of the Act for civil society or the State. The benefit for the South African State appears to have been in respect to its moral standing and not passing the Act compromised South Africa's reputation as a defender of international human rights. Many of the key stakeholders interviewed, including Parliamentarians and civil society, were concerned about the delay that enacting the Act would have on the country's reputation (particularly Schafer, 2015; Swart, 2015).

This was confirmed by, Wesen, the Human Rights Officer for the U.S. in South Africa, who was unconvinced that the threat of sanctions played any role in South Africa's decisions around the Act. Rather he claimed that it was South Africa's perception

of itself as a human rights protector that ultimately led the country to implement the Act, rather than any specific U.S. pressure. However, the Bush administration's anti-sex work stance, in the name of the anti-trafficking agenda, meant that throughout the 2000s funding was only given to both state and non-state actors who advocated for the criminalization of sex work in order to combat trafficking (Brennan, 2008). There has been no significant change in this position during the Obama administration and, as mentioned earlier, South Africa's reliance on PEPFAR funding makes it foreseeable that some of the U.S.'s enthusiasm for the anti-trafficking movement would have been influential in South Africa.

Additionally, two of the three Parliamentarians interviewed explicitly cited U.S. pressure and the threat of sanctions as present, but not highly influential, factors in passing the Act. When pushed for reasons why the Trafficking Act was implemented, respondents were more likely to emphasize the symbolism of ratifying the Palermo Protocol and creating a Trafficking Act for South Africa. Internationally, human rights protocols are not enforceable, and there are few examples of international sanctions for simple human rights abuses (Novitz, 2008), however, all informants reflected that 'it...did not reflect on us as a country well, because we had signed the Palermo Protocol, which required us to comply' (Swart, 2015). International pressure therefore cannot be seen as a causal factor in policy making but plays an indirect role in both the decision to create policy and the forms it takes. This may also explain why the definition of trafficking in the South African Act is very similar to the Palermo Protocol and has not been tailored to emphasize the specific dynamics of trafficking in South Africa described above, that is, internal and labour trafficking.

The primary group who had an interest in the creation of a Trafficking Act was, however, local civil society who had taken on trafficking in persons as a moral cause rather than one that had financial benefit. Nevertheless, amongst key informants there were two opposing opinions on whether local civil society had been important and influential in the policy process. The first, expressed by local civil society, is that 'civil society has quite a strong voice when it comes to this issue' (Wilkinson, 2015) and was particularly influential. This opinion was held by members of civil society as well as the IOM (Nikolovska, 2015) and Member of Parliament Steven Swart (2015). The opinion held by most Parliamentarians however, was that civil society was largely irrelevant when it came to this Act. Jeffrey even suggested that if the aim of this research was to understand the influence of civil society on legislation, we would be better off researching another piece of legislation. He noted he could remember who the key civil society organizations involved in other pieces of legislation were, but could not remember any who were involved in the Trafficking Act (Jeffrey, 2015).

These positions may not be as contradictory as they seem at first glance. It is clear that NGOs played a role in creating a public awareness over human trafficking through the internet, social media and the mainstream media. Whilst it would appear that South Africa had intended to have counter-trafficking legislation for many years prior to the existence of the anti-trafficking coalition (for example trafficking was already mentioned in the

Children’s Act of 2005), the pressure to implement urgently can be seen as a result of the formation of an anti-trafficking coalition and the concerns about trafficking that they were able to bring to the country’s attention. However, at the point of policy making, these organizations gave minimal commentary on the SALRC discussion document and did not shape the form that the policy took.

## Reflecting on policy frameworks

Using the 3-Is framework allowed for us to systematically lay out the building blocks of the policy process. Had we not done this initial descriptive work, some of the ideas that framed the Act might not have been visible. In particular, the debates about the nature and quality of the evidence used and the sidelining of more complex kinds of exploitation, which are more commonly found in South Africa, may not have come to the fore without an explicit emphasis on the *Ideas* that shaped the policy. However, we felt that the 3-Is did not capture many of the nuances of the policy process. Rather, it really was, as Gauvin describes, a ‘theoretical checklist’ (2014). As a result, we did further analysis using Sabatier and Jenkins-Smith’s Advocacy Coalition Framework (ACF). For example, one of the nuances of our research which the 3-Is framework failed to capture was the aligning of certain ideas and interests into two very distinct groups. This is, however, captured in Sabatier and Jenkins-Smith’s ACF in which the policy subsystem is the best ‘unit of analysis for understanding policy processes’ (Jenkins-Smith et al., 2014). A subsystem is:

[D]efined by a policy topic, territorial scope, and the actors directly or indirectly influencing policy subsystem affairs’ and is contested by various coalitions which consist of both public and private organizations which ‘seek to manipulate the rules of various governmental institutions to achieve’ the practical objectives of their ideas and interest (Sabatier, 1991, pp. 151–152).

This maps quite clearly on to our findings that trafficking in persons represents a set of ideas or a subsystem that is contested by two distinct coalitions – the anti-trafficking coalition and the rights-based coalition.

The 3-Is framework also fails to provide a conceptual understanding of how the various interests, ideas, and institutions interact. However, the ACF has many hypotheses and theories about how these various parts of the subsystem interact. Perhaps the one that had the most resonance with our findings was the Devil Shift. When coalitions contest a specific idea or policy proposal within a subsystem, the coalition which is perceived to have ‘won’ the interaction (for example by getting Parliament to pass the Trafficking Act the anti-trafficking coalition ‘won’ various contestations within the subsystem), is often viewed by the ‘loosing’ coalitions as having far more power and resources than is actually the case (Jenkins-Smith et al., 2014).

Remembering losses and the tendency to filter and assimilate stimuli through belief systems results in the “devil shift,” whereby actors exaggerate the

power and maliciousness of their opponents (Sabatier, Hunter, and McLaughlin 1987). The expected result is a demonization of opponents and the protraction of conflict (Jenkins-Smith et al., 2014, p. 191).

This takes into account the fact that individuals are often not rational in their behavior. It also accounts for the views expressed by many academics and members of the rights-based coalition that the anti-trafficking coalition was heavily funded by the United States and had access to excessive resources – something which our research did not find (these observations were made during interactions with academics and activists from SWEAT and ACMS). The Devil Shift proves to be a particularly useful way for conceptualizing the relationship between the two coalitions and speaks to the importance of more nuanced and developed frameworks, like the ACF, in thinking about the policy process in South Africa. Perhaps the most notable effect of this Devil Shift was the intense polarization of the debate about the quantity and nature of trafficking. For example, there were claims that large amounts of money were being spent on trafficking at the expense of other issues by self-interested organizations (ACMS, 2014). On the other hand, those questioning the extent of trafficking were referred to as trafficking denialists (Boe, 2009, pp. 2-3).

In conclusion, while the 3-Is framework served well as a ‘theoretical checklist’ the policy process in South Africa needs a theory which can account for and explain nuances and behavior, particularly in relation to evidence, international pressure, and the role played by local interest groups. ACF assisted when used selectively to theorize these descriptive findings, however, a more contextually relevant framework for the South African context would require revised and selective uses of the hypotheses.

## Conclusion

There are three significant conclusions that can be drawn about policy making from this project. The first is that research and evidence is used by policy makers and civil society in ad hoc and limited ways. Although there is recognition of the importance of evidence and accurate evidence, specifically from policy makers, they are, by their own admission, passive rather than proactive about evidence and wait for it to be presented to them. Consequently, its use, and in this instance its quality, is limited and ad hoc at best. Given that policy makers rely on civil society for the provision and verification of data, and that civil society were using methodologically unsound estimates to raise concern around trafficking, evidence was, and remains, a highly contested issue in conversations around trafficking.

There are very different views from the two coalitions regarding the potential impact of the legislation. For example, the anti-trafficking coalition heralded the new Act as legislation which will put an end to the exploitation of women and children in South Africa. The Act and its implementation have, however, taken place against the backdrop of a movement that has re-enforced the idea that women who migrate or enter sex work cannot do so of their own volition, but are forced into it. The passing of the Act can, therefore, also be said to validate the idea that trafficking is a prevalent issue in South Africa and has given credence to the concerns of the anti-trafficking movements. This includes the idea, which resonates throughout the global anti-trafficking movement, that all sex work is trafficking and that all trafficking is sex trafficking (Brennan, 2008). As such, the passing of the Act can be argued to have primarily served the interests of those who are against the decriminalization or of sex work in South Africa.

It would seem most likely, given the framing of the problem as a gendered and moral concern, that the increased power that the Act will give the police to identify victims of trafficking will lead to an increase in 'raid and rescue' operations in brothels and on the streets. This will likely endanger women who sell sex and are then subject to the abuses of the police and forced to push their business underground even further (Walker & Huencke, n.d.; Walker & Oliviera, 2015). Consequently, this case study highlights how problematic the reliance of Parliamentarians on civil society for evidence and facts can be.

The second conclusion that we can draw is that, although policy making largely happens at a national level, the concerns and focus that this policy responds to are often global. In this regard, our findings concur with those of Risse et al. (1999) and Betts and Orchard (2014) who highlight the role that international organizations and ideas have on national policy. One of the limitations of the literature around international norms is that it is assumed that they are progressive and that their implementation will result in more progressive human rights within the country in question. Very little critical attention is given to the evidence that civil society organizations present or the attention that they garner for their cause. The inability of those who tried to contest the 'evidence' of trafficking presented, and the ultimate implementation of the Trafficking Act, also speaks to the extent that gender

mainstreaming has been incorporated into policy making (Tolhurst et al., 2012).

Our research indicates that given the influence of international organizations and ideas in the policy making process, both on policy makers and civil society, there was very little in the form of alternative policy models available to policy makers. The Parliamentary Committee was mandated to create legislation to deal with trafficking, without there being any question as to whether it should be anything other than criminalized. While there was some discussion around the treatment of victims of trafficking upon their identification, it was not to the extent that there were various policy options. South Africa followed the approach taken by other countries, and local manifestations of migration related exploitation (associated with internal migration and labour migration) did not figure centrally in deliberations. Furthermore, there was a prevailing sense of not allowing victims of trafficking to be 'entitled' to more than South Africans or victims of other crimes, or allowing the Act to be abused by migrants that drove most of the discussions. While the two coalitions within the trafficking subsystem were quite polarised in their ideas around the evidence, or lack thereof, and whether sex workers are or are not de facto victims of trafficking, these did not lead to alternative policy options within the deliberations.

Finally, South Africa ratified the Palermo Protocol in 2004, but the Act was only operationalized eleven years later. This indicates that even when a policy is believed to be urgent and there is some pressure to rush the policy process, policy change can take more than a decade. Our findings have indicated that there were two stages at which key actors were particularly important to the passing of the Act. The first was during the 2000s when international actors, such as the U.S. government and international organisations, and local civil society began to mobilise around the idea that trafficking in persons was a prevalent problem in South Africa. The key contribution of these actors was to make the myths and perceptions around trafficking 'facts' in the national conversation (Bonhuys, 2012). The second stage was during the deliberations on the Bill when Parliamentarians were essential to getting the Act passed. Our research suggests that the willingness of these Parliamentarians to pass the Act was in part because trafficking had become such a part of the national conversation and that the evidence with which they were provided was not sufficiently questioned and contested in the mainstream media to allow them to question the need for the Act. Although both coalitions made submissions to Parliament on the Bill and presentations to the Committee, it appears from our findings that the anti-trafficking coalition was far more successful than the rights-based coalition in using these mechanisms to raise awareness. Our analysis shows that it was probably as a result of the anti-trafficking coalitions success at making trafficking part of the national conversation, and through the involvement of individuals and organisations who already had political capital, for example Molo Songololo and Nozizwe Madlala-Routledge a former deputy minister, the coalition's submissions and presentations were taken more seriously by the Parliamentary committee. Nevertheless, this coalition was less likely to make technical inputs into the Act than the rights-based coalition. In spite of the technical skill of the rights-based coalition their inputs did not result in alternative policy option for reasons described above.



As described in the introduction, the Trafficking in Persons Act represents a very particular kind of policy in South Africa. Its protective orientation makes it somewhat unusual in migration policy, which has been far more typically preoccupied with security. This means that it offers a particularly useful way of understanding how unpopular causes such as protection of migrant rights become policy. However, the findings also show very clearly how concerns with security and limiting migration feature heavily and shape the nature of the policy. Moreover, while the lessons cannot be automatically transferred to other kinds of migration policy making, they may be transferred to similar policies where issues of gendered harm, vulnerability, and protection are core concerns.

## References

- Abok, A., & Abok, A. (2015, August 17). MeCAHT.
- Allain, J. (2013). *Slavery in international law: Of human exploitation and trafficking*. Leiden: Martinus Nijhoff Publishers.
- ANA. (2016, July 18). Sex workers heckle Jeffery at International Aids Conference. Retrieved 4 August 2016, from <http://citizen.co.za/1209823/sex-workers-heckle-jeffrey-at-international-aids-conference/>
- Betts, A., & Orchard, P. (Eds.). (2014). *Implementation and world politics: how international norms change practice* (First edition). Oxford, United Kingdom: Oxford University Press.
- Bonthuys, E. (2012). The 2010 football world cup and the regulation of sex work in South Africa,. *Journal of Southern African Studies*, 38(1), 11 – 31.
- Brennan, D. (2008). Competing claims of victimhood? Foreign and domestic victims of trafficking in the United States. *Sexuality Research & Social Policy*, 5(4), 45 – 62.
- Cohen, S. (1980). *Folk devils and moral panics: The creation of the mods and rockers*. Oxford: Martin Robertson.
- de Gruchy, T., Vearey, J., Richter, M., & Quirk, J. (2015, September 23). More harm than good - the politics of child trafficking prevention in South Africa [Sonke Gender Justice]. Retrieved from <http://www.genderjustice.org.za/news-item/more-harm-than-good-the-politics-of-child-trafficking-prevention-in-south-africa/>
- Department of Home Affairs. (2016). *Green Paper on International Migration* (Government Gazette No. No. 40088) (pp. 15 – 93). Retrieved from [http://www.dha.gov.za/files/GreenPaper\\_on\\_InternationalMigration-%2022062016.pdf](http://www.dha.gov.za/files/GreenPaper_on_InternationalMigration-%2022062016.pdf)

- De Sas Kropiwnicki, Z. (2010). *Wolves in sheep's skin: A rapid assessment of human trafficking in Musina, Limpopo Province of South Africa*. Geneva: International Organization for Migration. Retrieved from [https://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/countries/docs/wss\\_human\\_trafficking\\_assessment.pdf](https://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/countries/docs/wss_human_trafficking_assessment.pdf)
- Eye on Human Trafficking: Issue 21, 2009 | International Organization for Migration. (n.d.). Retrieved 27 June 2016, from <http://southafrica.iom.int/publications/eye-human-trafficking-issue-21-2009>
- Gauvin, F.-P. (2014). *Understanding policy developments and choices through the 3-Is framework: Interests, ideas and institutions*. Montréal, Québec: National Collaborating Centre for Healthy Public Policy.
- Goodey, J. (2008). Human trafficking: Sketchy data and policy responses. *Criminology & Criminal Justice*, 8(4), 421 – 442.
- Gould, C., & Fick, N. (2008). *Selling sex in Cape Town: Sex work and human trafficking in a South African city*. Institute for Security Studies.
- Gould, C., Richter, M., & Palmary, I. (2010). Of Nigerians, albinos, satanists and anecdotes: A critical review of the HSRC report on human trafficking. *South African Crime Quarterly*, (32). <http://doi.org/10.17159/2413-3108/2010/v0i32a883>
- Hesse-Biber, S. N., & Leavy, P. (2011). *The practice of qualitative research* (2nd ed.). Thousand Oaks: SAGE Publications.
- How Long Does It Take To Pass And Enact Bills? | PMG. (n.d.). Retrieved 19 July 2016, from [https://pmg.org.za/page/How%20long?utm\\_medium=featured-card&utm\\_source=homepage](https://pmg.org.za/page/How%20long?utm_medium=featured-card&utm_source=homepage)
- Jeffrey, J. (2015, August 24). MP (ANC).

- Jenkins-Smith, H. C., Nohrstedt, D., Weible, C. M., & Sabatier, P. A. (2014). The Advocacy Coalition Framework: Foundations, evolution, and ongoing research. In *Theories of the policy process* (3rd ed., pp. 183 – 224). Westview Press.
- Martens, J., Pieczkowski, M., & van Vuuren-Smyth, B. (2003). *Seduction, sale and slavery: Trafficking in women & children for sexual exploitation in Southern Africa*. International Organization for Migration (IOM) Regional Office for Southern Africa. Retrieved from [http://www.givengain.com/cause\\_data/images/2157/IOM\\_TraffickingReport3rdEd.pdf](http://www.givengain.com/cause_data/images/2157/IOM_TraffickingReport3rdEd.pdf)
- Modrau, K. (2015, August 18). A21.
- Nikolovska, M. (2015, July 30). IOM, Pretoria.
- Novitz, T. (2008). International law and human rights in the context of globalization. In *Governance, globalization and public policy* (pp. 107 – 130). Cheltenham: Edward Elgar.
- O'Connell Davidson, J. (2015). *Modern slavery: The margins of freedom*. Hampshire: Palgrave MacMillan.
- Patton, M. Q. (2002). *Qualitative research and evaluation methods* (3rd ed.). Thousand Oaks: SAGE Publications.
- Peberdy, S. (2009). *Selecting immigrants: national identity and South Africa's immigration policies, 1910-2008*. Johannesburg, South Africa: Wits University Press.
- Richter, M., Gould, C., & Palmay, I. (2010). Of Nigerians, albinos, satanists and anecdotes: A critical review of the HSRC report on human trafficking. *SA Crime Quarterly*, 32.
- Richter, M., Luchters, S., Ndlovu, D., Temmerman, M., & Chersich, M. F. (2012). Female sex work and international sport events - no major changes in demand or supply of paid sex during the 2010 Soccer World Cup: a cross-sectional study. *BMC Public Health*, 12(763). Retrieved from <http://www.biomedcentral.com/1471-2458/12/763>

- Risse, T., Ropp, S. C., & Sikkink, K. (Eds.). (1999). *The power of human rights: international norms and domestic change*. Cambridge: Cambridge University Press.
- Sabatier, P. A. (1991). Toward better theories of the policy process. *PS: Political Science and Politics*, 24(2), 144 – 147.
- Sandenberg, C. (2015, July 2). STOP.
- Schafer, D. (2015, August 17). Schafer, MP (DA).
- Segatti, A., & Landau, L. B. (2011). *Contemporary Migration to South Africa: A Regional Development Issue*. World Bank Publications.
- Sex Workers Education & Advocacy Taskforce. (2016). Decriminalisation of sex work fact sheet. Retrieved from <http://www.sweat.org.za/campaigns/decriminalisation-of-sex-work-fact-sheet/>
- Smit, C. (2016, January 28). ANEX-CDW.
- Solomons, P. (2015, August 27). Molo Songololo.
- Surel, Y. (2000). The role of cognitive and normative frames in policy-making. *Journal of European Public Policy*, 7(4), 495 – 512.  
<http://doi.org/10.1080/13501760050165334>
- Swart, S. (2015, August 16). Swart, MP (ACDP).
- Tolhurst, R., Leach, B., Price, J., Robinson, J., Ettore, E., Scott-Samuel, A., ... Theobald, S. (2012). Intersectionality and gender mainstreaming in international health: Using a feminist participatory action research process to analyse voices and debates from the global south and north. *Social Science & Medicine*, 74(11), 1825–1832.  
<http://doi.org/10.1016/j.socscimed.2011.08.025>
- United States Government Accountability Office. (2006). *Human trafficking: Better data, strategy, and reporting needed to enhance U.S. antitrafficking efforts abroad*. (Report to the Chairman, Committee on the Judiciary and the Chairman, Committee

- on International Relations, House of Representatives No. GAO-06-825). Washington, D.C. Retrieved from <http://www.gao.gov/assets/260/250812.pdf>
- U.S. Department of State. (2001). *2001 Trafficking in Persons Report*. Retrieved from <http://www.state.gov/documents/organization/4107.pdf>
- Walker, R., & Huencke, A. (n.d.). Sex Work, Human Trafficking and Complex realities in South Africa. *Journal of Trafficking, Organised Crime and Security. Special Issue Trafficking, Smuggling and Human Labour in Southern Africa* (eds. Galvin, T, Walker, R and Behrens, C), (2016 forthcoming).
- Walker, R., & Oliviera, E. (2015). Contested spaces: Exploring the intersections of migration, sex work and trafficking in South Africa. *Blurred Lines: The Contested Nature of Sex Work in a Changing Social Landscape. Journal of Social Science*, 11(2), 129 – 153.
- Wilkinson, D. (2015, July 20). National Freedom Network.
- Zheng, T. (2010). *Sex trafficking, human rights and social justice*. New York.

## Appendix 1: List of people interviewed

Chad Wesen, US Embassy Human Rights Officer
Patric Solomons, Molo Songololo
Marija Nikolovska, IOM
Aboks, Media Campaign Against Human Trafficking
Katie Modrau, A21
Diane Wilkinson, National Freedom Network
Steve Swart, MP for the ACDP
Debbie Schafer, former MP for the DA
John Jeffrey, Deputy Minister of Justice and Constitutional Development
Claudia Smit, ANEX
Kamraj Anirudhra, Commission for Gender Equality
Maria Stacey, formerly SWEAT
Amanuel Tesfayesus Mehari, UNHCR
Shanaaz Mia, South African Chapter, International Association of Women Judges
Corinne Sandbergh, STOP
Mpilo Nkomo, IOM
Ishtar Lakhani, SWEAT
Gauteng, DSD
Gauteng, DSD
Charleen May, LHR

## About the Migrating out of Poverty Research Programme Consortium

***Migrating out of Poverty*** is a research programme consortium (RPC) funded by the UK's Department for International Development (DFID). It focuses on the relationship between migration and poverty – especially migration within countries and regions – and is located in five regions across Asia and Africa. The main goal of ***Migrating out of Poverty*** is to provide robust evidence on the drivers and impacts of migration in order to contribute to improving policies affecting the lives and well-being of impoverished migrants, their communities and their countries, through a programme of innovative research, capacity building and policy engagement. The RPC will also conduct analysis in order to understand the migration policy process in developing regions and will supplement the world-renowned migration databases at the University of Sussex with data on internal migration.

The ***Migrating out of Poverty*** consortium is coordinated by the University of Sussex, and led by CEO Professor L. Alan Winters, with Dr Priya Deshingkar as the Research Director. Core partners are: the Refugee and Migratory Movements Research Unit (RMMRU) in Bangladesh; the Centre for Migration Studies (CMS) at the University of Ghana; the Asia Research Institute (ARI) at the National University of Singapore; the African Centre for Migration & Society (ACMS) at the University of the Witwatersrand in South Africa; and the African Migration and Development Policy Centre (AMADPOC) in Kenya.

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