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**Hidden transcripts, moral and policy entrepreneurs, and
human trafficking legislation in South Africa**

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**Hidden Transcripts, Moral and Policy Entrepreneurs, and Human
Trafficking Legislation in South Africa**

by

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ABSTRACT

In 2013 South Africa signed the Prevention and Combating of Trafficking in Persons Bill into law. During the run-up to 2010 FIFA Soccer World Cup in South Africa, early drafts of this bill were almost steamrolled through parliament. The proposed anti-human trafficking bill generated huge public interest. The soccer event provided a perfect opportunity for moral and policy entrepreneurs to manufacture and stage moral panic about the problem of human trafficking in the country. These moral or policy entrepreneurs – the anti-prostitution and human trafficking organisations – employed a victimhood approach to justify the intensification of ‘urgent law enforcement’ to deal with human trafficking. The exploitation of women and children in the sex industry became a rallying point for moral and policy entrepreneurs. Hence, government awareness campaigns, during the run up to the 2010 FIFA World Cup, were characterised by desperate language such as *trafficking of women and children for sexual purposes*.

The South African government hastily responded by announcing a proposed anti-human trafficking bill. The bill was introduced in parliament for discussion two months before the kick-off of the sporting event. This happened; despite the fact government did not provide empirical evidence showing a rise in, or alarming statistics about, human trafficking. Parliament refused to debate the bill. The decision by parliament - to put on hold the discussion and the passing of the bill - was in fact an act of legislative sovereignty. However, both the actions of government, NGOs and parliament must be understood in the context of playing out what Scott (1990) refers to as ‘dominance and the art of resistance’. The sovereign practise by legislators was a particular form of political disguise. South Africa did not want to openly rebel against the dominant agenda behind anti-human trafficking bill.

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DECLARATION

I hereby certify that this material, which I now submit for assessment through the programme of study leading to the award of Master of Art Degree in Force Migration Studies, is entirely my own work, that I have exercised reasonable care to ensure that the work is original, and does not, to the best of my knowledge, breach any law of copyright, and has not been taken from the work of others, save as to the extent that such work has been cited and acknowledged within the text of my work.

Signed

Date 06 February 2015

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ACRONYMS

ACDP.....	African Christian Democratic Party
CoRMSA.....	Consortium for Refugees and Migrants in South Africa
FIFA.....	International Federation of Association Football /Fédération Internationale de Football Association
HSRC.....	Human Sciences Research Council
IOM.....	International Organisation for Migration
IMF.....	International Monetary Fund
ISS.....	Institute for Security Studies
NPA.....	National Prosecuting Authority
NGO.....	Non Governmental Organisation
NCOP.....	National Council of Provinces
NGO.....	Non-Governmental Organisation
UNODC	United Nations Office on Drugs and Crime
SALRC.....	South African Law Reform Commission
SA.....	Salvation Army
SAPS.....	South African Police Service
PMG.....	Parliamentary Monitoring Group

Researcher's definitions

The South African government in this study refers to executive arm of the state represented by different national departments.

Parliament in this study refers mainly to the Justice and Constitutional Development Portfolio Committee.

Section 74 of the South African Constitution (1996) states it clear *that there must be separation of powers between the judiciary, the government and parliament and these branches perform a separate function and are independent from each other.*

CHAPTER 1

1.1 Introduction and Background

In their book, *Policing the Globe*, Andreas and Nadelmann (2006) argue that as economic barriers have fallen, due to the rise of globalisation, police barriers have risen because of fears of transnational crimes such as terrorism, trafficking and money laundering. They state that governments are now required to co-operate in tackling cross-border crimes. Their analysis includes the enduring importance of power, conflict and the influences of dominant states in shaping the agenda, the reach, the priorities and intensity of international crime control.

We tell a constructive story highlighting how and why certain cross-border activities once considered normal are defined and condemned as deviant - often through the proselytising activities of transnational moral entrepreneurs - and become the subject of prohibition norms possessed of powerful symbolic appeal regardless of their effectiveness (Andreas and Nadelmann 2006:3).

The authors combine different perspectives in explaining the development of international crime control policy. Firstly, they look at the power, conflict and the dominant influence of powerful actors in shaping the policy. Secondly, they look at the growth of international police co-operation propelled by mutual interest between independent states. Finally, they apply a constructivist approach, which highlights why certain social issues such as cross-border activities, once considered as normal, are now being deemed as deviant.

For instance, De Haas (2008) argues that following the 2004 Madrid and 2007 London bombings: European countries have intensified border control focusing on clamping down on trafficking and smuggling networks. In other words, the movement of people has become a security issue and this develops the perception that the migration of poor people to rich nations will create social ills such as crime, disease and the smuggling of drugs, women and children. This perception is real in countries that have experienced a large influx of migrants, terrorists and xenophobic attacks. For instance, Bonthuys' (2012) research report explored whether xenophobic attacks (of the type experienced in May 2008) might have been possible during the hosting of the World Cup by South Africa (the Cup brought anxieties about possible violent attacks against foreigners). There is a perception that human trafficking is

likely to flourish in poor countries because they do not have capacity to design and implement complex social-legal interventions to curb human trafficking.

Hence, countries in the developing world can be pressured, through international legal principles, to develop domestic anti-human trafficking legislation. This is despite the fact that human trafficking is not a major problem for certain developing countries. South Africa has been subjected to the power, conflict, contestation and the tension arising out of international policies or laws that seek to control crime. The tabling of anti-human trafficking legislation in South Africa is one subject that has generated a great deal of contestation for different actors during the run up to the 2010 FIFA Soccer World Cup.

The anti-human trafficking legislative process, particularly during the run up to the World Cup in South Africa, was characterised by organisations which re-emerged with a particular kind of humanitarian approach that pushed for an urgent moral intervention to the problem of human trafficking. Until then, anti-human trafficking legislation had not been elevated to mainstream government programmes. Moral and policy entrepreneurs employed both the agenda of anti-prostitution and victimhood to push government to act urgently during the run up to the 2010 FIFA Soccer World Cup. The South African government response could not be faulted because government had to comply with international trafficking protocols. However, international legal principles such as trafficking protocols can be seen as interfering with the sovereignty of the domestic legislative process if they are imposed from outside.

As Yuko (2009:19) notes:

While the transnational criminal law conventions may outline some criminal requirements for States to implement, it is frequently the norms of criminal law and punishment of more influential States that determine the standard for other States' punishment. As a result, more influential States take advantage of transnational criminal law as a way of extending their own criminal jurisdiction through the prosecution of criminal acts that have taken place not only in the State itself, but other States as well. When more powerful States utilise transnational criminal law, it may influence the criminal laws of weaker States, which may choose to adopt similar laws for the purpose of further co-operation.

The South African parliament's refusal to debate the bill pointed to fault lines in the legislative sovereignty of the South African government. This thesis will focus on the tensions during the build up to the start of the 2010 FIFA Soccer World Cup.

1.2 Background on research regarding legislative processes

According to the views of the dominant, Western organisations in this field, the only legitimate reports which have shaped anti-human trafficking legislation are international institutions such as the United Nations Educational Scientific and Cultural Organisation (UNESCO: 2007), the International Organisation for Migration (IOM: 2003) and other local actors such as the Human Sciences Research Council (HSRC: 2010), the South African Law Reform Commission (SALRC 2004) and Molo Songololo (2000).

South Africa is seen by above mentioned organisations as playing multiple roles in facilitating the movement of trafficked individuals. For instance, the UNESCO (2007), HSRC (2010) and IOM (2003) reports claim that South Africa is the 'source, transit and destination country for men, women and children trafficked for sexual exploitation and organ harvesting'. These research reports were considered by SALRC during the first stage of the design process of the anti-human trafficking bill. Gould & Fick (2008) have been critical of both the IOM (2003) and HSRC (2010) reports arguing that they only helped to raise awareness of human trafficking as opposed to understanding the extent of human trafficking in South Africa. They also believed that the HSRC (2010) report was methodologically flawed and that the existence of human trafficking was justified based on anecdotal evidence which is impossible to verify.

Apart from research, the SALRC, under the Department of Justice and Constitutional Development, had to consider international protocols. South Africa is obligated by international binding agreements which were signed and ratified in Palermo, Italy by the South African government. On 14 December, 2000, the SA government signed both UN Convention and Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. It also signed the Convention against Transnational Organised Crime (Palermo Protocol). These were later ratified on 20 February 2004 (HSRC 2010: 15). The Palermo Protocol criminalises both human trafficking and organised crime.

The ratification symbolised the South African government commitment to the international community crusade in fighting what has been dubbed by others as modern-day slavery.

The ratification was followed by a domestic process to put in place anti-human trafficking legislation. The LRC had to start with consultations in preparation for a bill. From a legal point of view, there are no time frames for consultations. However, from 2003 and for sometime thereafter, progress was made towards tabling a comprehensive human trafficking bill. It was not covered much by the media. The consultations did not generate the kind of public interest that was witnessed before the start of the World Cup. The government was only prepared to mention that consultations were required before the bill could be tabled in parliament. The first notable discussion or consultation about human trafficking in parliament was in 2005 when Molo Songololo presented its research findings to parliament. This made sweeping claims based on a few case studies in the Western Cape.

The public interest and debates about anti-human trafficking legislation re-emerged with vigour during the build-up to 2010 FIFA World Cup. Richter & Monson (2010) believes that faith-based organisations, anti-prostitution bodies and international institutions mobilised society through media, church and public platforms to strongly compel ‘the government to do something about human trafficking’ The government tabled an anti-human trafficking bill at the beginning of 2010 but this was stalled by parliament. Parliament put the discussion on hold until after the 2010 FIFA World Cup.

Another step which led to the development of the anti-human trafficking bill was taken by SALRC. While reviewing the Child Care Act and the Sexual Offences Act, SALRC decided to research human trafficking with a view to developing a bill that criminalises human trafficking. The SALRC Issue Paper (2004) revealed that adults, particularly relatives of trafficked children, are also involved in trafficking and a separate investigation was needed to look at this. The issue paper was followed by submissions with a view to developing a domestic bill criminalising human trafficking.

The introduction of the bill to parliament took place against a backdrop of intensive media coverage of human trafficking and questions about the lack of human trafficking legislation. The NGOs and faith-based organisations had already launched anti-human trafficking awareness campaigns. A number of unfounded statements were made about the connection of

global sporting events to an increase in human trafficking. In some cases, the campaigns were credited for preventing human trafficking in countries that previously hosted big sporting events. Ham's (2011) research report about the myths and facts around sporting events and trafficking is useful here, because she shows that there is no direct link between the increase in human trafficking and sporting events. However, for Ham, sporting events are crucial in drumming up support for a particular call for action.

This was certainly true for the previous FIFA 2006 World Cup that was hosted in Germany. It was hypothesised that 40 000 people would be trafficked during the FIFA 2006 World Cup. As indicated by Ham (2011) this figure was quoted in many media debates to manufacture an unfounded rumour and anxiety about the number of people that would be trafficked during the sporting event. The South African government went on a charm offensive arguing that it was not true that it was not doing enough against human trafficking. The South African government could not afford to disappoint the international community. It had to allay the fears of Western visitors who had harboured doubts about their safety in South Africa and the rest of continent.

Considering the amount of public interest in human trafficking, and government response and actions, a legitimate expectation was that South Africa would have an anti-human trafficking law in place before the start of the World Cup. Katzenstein (1996) states that the conditions for states' participation in an international system is to adhere to shared norms and rules in a variety of issue areas, but within a framework of normative expectations embedded in public and customary international law.

This is particularly true for countries that model their democratic practises on the liberal West. The South African government wanted to be seen as playing its part in the global fight against human trafficking. Yuko (2009) argues that many states in the developing world have opted for co-operation regarding the creation of a national, domestic anti-human trafficking law. Nobody could have predicted the resistance when parliament decided to put on hold the discussions about the anti-human trafficking bill until the World Cup was complete. However, parliament was careful in the way it put the process on hold. It argued for a rational approach, citing that more consultation was needed between different departments.

In his book, *Domination and the Arts of Resistance: Hidden Transcripts*, Scott (1990) argues that the weak employ different forms of resistance to defy powerful and dominant discourses. Scott (1990) also takes into account disguised forms of public dissent which helps to understand how we can be critical of the actions of political elites. For example, parliament used its legislative sovereignty to resist the pressure from government, the international community, and powerful policy and moral entrepreneurs who wanted to see the bill being passed in parliament.

The refusal by parliament could be seen as plausible. At the same time it did not want South Africa to be seen as doing nothing about human trafficking. Hence, parliament spoke about its satisfaction about government efforts against human trafficking, even though parliament itself had put discussion about the bill on hold. As Scott (1990:4) argues: “It is designed to be impressive, to affirm and naturalise the power of dominant elites, and to conceal or euphemise the dirty linen of their rule”. But it is also worth noting that other policy entrepreneurs, such as Institute for Security Studies (ISS), were opposed to rushing the bill through, citing amongst other issues the lack of reliable data and confusion about human trafficking in South Africa. Therefore, it is important to note that some NGOs were critical of the manner in which the legislative process was proceeding. The national legislative sovereignty was also challenged at a technical level by local actors (the ISS and the Centre for Refugees and Migrants, among others) who disagreed with the process and with some content used for drafting the bill.

Sassen (1996) argues that sovereignty has been transformed and that countries’ abilities to lay claim to territorial decisions is being challenged. For Sassen (1996) sovereignty has been denationalised. National territory and government can be challenged and held accountable at both a local level and international level. Developing nations cannot be seen acting in defiance of international community protocols. They should conform to international binding standards and norms. They should do this despite the fact that subordinate political institutions such as state and parliament are capable of acting on their own, particularly in enforcing national goals. The moral and policy entrepreneurs are part of the power play and the narrative of the powerful political players in global politics.

Sassen (1996) believes that sovereignty is transformed through the use of a human rights regime, international binding agreements and economic institutions. For Azapmo (2007) in

the past, fears of the return of communism compelled the rich countries to transform and undermine the sovereignty of the developing nations through economic intervention by financial policy entrepreneurs such as the International Monetary Fund (IMF) and the World Bank's Structural Adjustment loans to which were attached strict conditions. These two institutions are known for forcing the developing world to cut their subsidies for social services, leaving them without sovereignty over their financial policies and laws.

On the other hand, the major fears of powerful, rich countries include organised crime, trafficking, migration and terrorism. De Haas (2008) argues that these are perceived as problems rooted in developing nations. In other words, developing countries are seen by the West as a hub for organised crime, terrorism and trafficking. As a result, it is believed that crimes such as human trafficking are planned in developing countries and victims are trafficked to rich countries. Therefore, developing nations should be forced to develop and implement domestic laws favoured by the West. Hence, developing states have opted to use strict law enforcement measures against immigrants, instead of addressing the root causes of human trafficking.

However, as Sassen (1996) has indicated, sovereignty is being transformed by international institutions and West. The rich countries, by virtue of funding international bodies, are in control of these international bodies' agendas and actions. In other words, projects have to satisfy the interests of the funders. The institutions are known as 'policy entrepreneurs' because of their knowledge in specialised field and profiting from a societal problem. Kingdon in Birkland (2011:173) argues that policy entrepreneurs will wait for what he termed a "brokerage period or window of opportunity". These times enhance pressure on the state to act in response to outside pressure or political changes. For instance, during the 2010 FIFA Soccer World Cup, anti-human trafficking legislation became part of the public interest and attracted attention from the media, research institutions, politicians and church leaders. This thesis will draw on observations from this sporting event to show how the policy and moral entrepreneurs were exerting their influence on the government, while also weakening the role of state sovereignty in the legislation process.

During the build-up to the 2010 FIFA Soccer World Cup government anxiety was roused. International organisations and some local actors were concerned about the trafficking of foreign women, and the use of children and women for sexual exploitation. Some faith-based

organisations argued that South Africa's porous borders would allow easy movement of trafficked women into South African brothels. As indicated in Richter & Monson (2010) this prompted other actors such as the ISS to conclude that that certain actors wanted to use the anti-human trafficking legislation to target sex workers and limit their activities during the mega event. Other organisations such as the Consortium for Refugees and Migrants in South Africa (CoRMSA) were concerned that the legislation was driven by only two research reports: one from IOM (2003) and one from Molo Songololo (2000). Gould & Fick (2008) from ISS argued that the reports from the two organisations did not provide the understanding of the problem but only raised awareness about human trafficking.

The 2010 FIFA Soccer World Cup came and went. Until the end of 2013, anti-human trafficking legislation also became largely invisible. Media, moral and policy entrepreneurs showed less interest in anti-human trafficking campaigns. The last reported popular activity on anti-human trafficking was when *Eyewitness News* (2011) reported that a coalition of child welfare organisations marched outside parliament complaining about the slow process to complete the legislation

1.3 Research question

The first part of the research question is why the Prevention of Trafficking & Combating of Trafficking in Persons Bill was rushed through parliament. The second part is why legislators refused to discuss and pass the bill when it was tabled by the Department of Justice and Constitutional Development on behalf of the South African government in parliament during the run up to 2010 FIFA World Cup.

1.4 Research objectives

The key objective is to contribute to the understanding of the anti-human trafficking legislation process in South Africa so as to avoid pitfalls during future big sporting events. These pitfalls include undue influence from international pressure groups (whose intentions are not always pure) and the challenges around human trafficking per se. International pressure groups can have hidden agendas which have more to do with strengthening

international laws, or a hatred of prostitution, and less to do with helping victims of trafficking.

1.5 Origin of the study

This study was born out of the interesting developments which occurred in the South African parliament in 2010. Following six years of consultations, workshops and research, the South African government embarked on a charm offensive and decided to table an anti-human trafficking bill two months prior to the start of the 2010 FIFA Soccer World Cup. The South African government in this scenario refers to the executive arm of the state represented by different national departments.

The Department of Justice and Constitutional Development tabled the bill with the hope that it would be passed before the start of the 2010 FIFA World Cup. Yet, government vehemently denied that the bill would be passed before the start of the World Cup, particularly in dealing with prostitution. Nonetheless, parliament refused to pass the Prevention of Trafficking & Combating of Trafficking in Persons Bill citing, among other things, the bureaucratic process that had to be considered.

The legislators' concerns about the bill seemed to be legitimate. The legislators argued that the loopholes in the bill could be exploited by traffickers. Legislators had concerns that the bill did not propose harsh enough punishment for perpetrators of human trafficking. However, parliament through the Portfolio Committee on Constitutional Development released a short statement arguing that the bill could be not passed in time for the 2010 FIFA World Cup.

Suspensions were raised that the South African government was being pushed by international institutions, the media, lobby groups and other parties fighting against human trafficking. After all, South Africa, a developing country in Africa, was hosting the most watched international sporting event in the world. It was not clear at this stage whether the pressure was a perceived one or real. Was parliament conducting its normal business when it asked for the postponement on further deliberation on the bill? It is worthwhile exploring and describing the activities of anti-human trafficking bodies to understand their real motives behind their support for the bill. This bill did not originate from the strong public opinion of

ordinary communities in South Africa. A closer examination is needed to look at why there was a sudden rush for the bill to be passed before the 2010 FIFA World Cup. What lay behind government timing of the introduction of the bill?

The other aspect, which could not be answered, was why there was sustained media coverage about human trafficking. Also questionable was the nature of participation of non-governmental organisations in the process of forming and lobbying for the bill. These puzzling questions can only be answered if this study employs Scott's (1990) notion of 'hidden transcripts' to examine institutional actions concealed in the public space.

One must remember that during this time, government was seen by some activists as weak and being controlled by a powerful international soccer body known as FIFA. It was critical for South Africa not to be seen to be acting against international standards and norms set by the Western funded institutions such as the UN, particularly in compliance with international protocols. This is because the event was an international affair itself, and a product of the West.

IOM is an international body which has been lobbying worldwide for anti-human trafficking legislation. Locally, networks such as Molo Songololo and the Salvation Army have made key inputs into the drafting and strategic NPA plans for the implementation of the South African anti-human trafficking bill. Other NGOs such as ISS came in later during parliamentary discussions. The participation of NGOs in the public legislation process in South Africa requires close scrutiny. We need to interrogate the nature of this influence on the response of the parliament and the sovereignty of the state.

Hence, this thesis will examine public transcripts to understand the disguised forms of public dissent and subordinate resistance. These transcripts are in sharp contrast to the already existing data which has focused at grassroots level, particularly on the so-called 'victims of traffickers' as opposed to the influence of different actors (lobby groups) on anti-human trafficking legislation. In other words, this thesis argues that to understand a public legislation process, a researcher should also consider the roles and interests of actors in shaping anti-human trafficking legislation in South Africa.

CHAPTER 2 LITERATURE REVIEW AND THEORETICAL MODEL

2.1 History of Human Trafficking

It is critical for this thesis to briefly look at the history of human trafficking so that we can understand the influence of the West (power blocs), moral entrepreneurs and anti-prostitution bodies on the anti-human trafficking agenda. This will help show that from the start, the tabling of the anti-human trafficking legislation in South Africa cannot be isolated from anti-human trafficking struggles waged by the organisations internationally. Human trafficking has attracted governments, media and policy makers from as early as 1904 with the International Agreement for the Suppression of the White Slave Traffic. Yuko (2009) argues that the motivation for this anti-human trafficking agreement in rich countries was the protection of white women and children who were trafficked for purposes of sexual exploitation.

From the beginning, the dominant discourse posited the link between human trafficking and prostitution. It is extremely difficult for states and governments to oppose this dominant norm. The South African context is quite similar. The link between prostitution and trafficking of women for sexual exploitation is also historical. Van Onselen (1982) argues that the capitalist development in then Transvaal led to the demand for prostitutes by men working in the mines. He argues that there were few women as compared to men residing next to Market Square. In the 1890's van Onselen indicated that there were 200-300 pimps known as 'white slavers' and their activities were linked to trafficking women for sexual purposes. There was also organised crime and police corruption in the early days of the city of Johannesburg.

According to him, what followed then were several attempts over 10 years by local authorities, including the British administration in 1905, to criminalise prostitution. Van Onselen's analysis of local authorities's battle against prostitution borders on moral outrage. The community, particularly the white middle class and the church, held deep beliefs about the shamefulness of prostitution and brothels. He indicates that there were regular marches against prostitution. However, during this time, South Africa was an apartheid state isolated from the international community. The local anti-trafficking struggles were therefore limited to local spaces.

The democratic dispensation opened up new fronts for anti-prostitution bodies. Vigneswaran (2012) argues that with South Africa ratifying human rights conventions and treaties, the country became a target for international NGOs' advocacy about human rights issues that are tied to funding. For Vigneswaran (2012) human trafficking became a competitor for funding and attention.

Some scholars invoke anti-slavery sentiments by tracing human trafficking from the slave trade when Africans were forcibly sent to work in America in the 1600s. However, human trafficking and slavery is not the same thing. Yet there are similarities between the two activities. The use of the word 'slavery' continues to be used by anti-human trafficking bodies and governments on public platforms.

2.2 Definition of human trafficking

Different scholars and institutions adopt different definitions in different contexts. The use of the word 'slavery' and the comparison of human trafficking to slavery has been a common feature in an attempt to characterise human trafficking. Anti-Slavery International, the world's oldest international human rights organisation and a charity in the United Kingdom, defines slavery as "the condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including where such a condition results from a debt or contract made by the person" (see Anti-Slavery International 2013).

Although slavery is prohibited by the 1948 *Universal Declaration of Human Rights* and the 1956 *UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery*, practices similar to slavery still occur today. Today's anti-human trafficking messages from some religious groups, anti-sex trade groups, governments and international non-government organisations is that that slavery in today's modern world is characterised by prostitution, trafficking, bonded labour, child labour, forced labour, forced marriages and other forms of exploitation. Hence some anti-trafficking organisations and governments have constructed the concept of 'human trafficking'. The reason why 'human trafficking' is dubbed today's 'modern slavery' is because of the striking similarities with slavery. At the core of the comparison are the following characteristics:

- Control of movement
- Control of physical environment.

- Psychological control
- Measures taken to prevent or deter escape, force, threat of force or coercion
- Assertion of exclusivity
- Subjection to cruel treatment and abuse, control of sexuality, and forced labour

Governments have to attempt to prevent the above aspects of human trafficking.

They have adopted international anti-human trafficking legal principles that evolved in the context of human rights. In other words, the fight against human trafficking is seen as a human rights issue. This is despite the fact that organisations and individuals have different histories and understandings of human trafficking.

The internationally accepted definition of human trafficking is found in the Article 3 of the United Nations Protocol. According to the United Nations Office on Drugs & Crime (2013) (UNODC), Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, human trafficking is defined as:

Trafficking in Persons as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation or 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.

The UN believes that this addresses all elements of human trafficking. Those elements include why, how and for what purpose human trafficking is being practised. It is clear from this perspective that there must be the use of force, threat, deception and it is done for the purposes of benefiting an economic or cultural practice.

2.3 Moral entrepreneurs

Following the abolishment of slavery in England in 1772, Britain had outlawed the slave trade with the Slave Trade Act in 1807. Despite this, forms of slavery continued to be

practised. Andreas and Nadelmann argue (2006:28) that during the 1800s, a new generation of moral entrepreneurs emerged, and among whom William Wilberforce was the public leader and the Anti-Slavery Society was the driving organisational force.

They argued that Wilberforce and the Society's efforts played a crucial role in changing both popular and elite opinion in Britain. The popular moral opinion of the elite was strongly against the slave trade. Britain became a Western champion of the anti-slave trade position although Andreas and Nadelmann (2006:29) acknowledged that it did little to "shape the moral views of foreign societies". They argued that some countries possessed military might of their own and they were protecting their own self-interests and sovereignty.

Becker (2008:1) argues that a moral entrepreneur is someone who believes that the current rules are not enough to punish the "evil that exists in society". He argues that this entrepreneur operates on the presumption that nothing can be right in the world until rules are created to correct it. Furthermore, Becker (2008) notes that such an institution or individual operates with an absolute ethic. He believes that what a wrongdoer (for instance a human trafficker) does is truly and totally evil with no qualification. Any means is justified to do away with wrongdoing.

We saw how vociferous the anti-human trafficking bodies and legislators were in parliamentary discussions, justifying harsh punishment for human traffickers, and creating a sense of the crisis of human trafficking. The strength of moral entrepreneurs is in the use of 'moral panic' to achieve their goals. According to Rohloff & Wright (2010) moral panic is a sociological concept that seeks to explain a particular type of over-reaction to a perceived social problem. For instance, the Salvation Army's international position statement on human trafficking on its website says:

Human trafficking is contrary to the principles of freedom and dignity. The exploitation of human beings dehumanises the individual who is trafficked, rewards the inhumanity of traffickers and weakens the moral and social fibre of society at large. Traffickers need to be stopped and held accountable (See Salvation Army 2012).

According to Becker (2008) moral entrepreneurs believe that their mission is a holy one. For instance, civil movements fighting against gambling can be categorised as moral entrepreneurs because they believe that gambling is immoral. They demand legal action which criminalises the practice. Becker (2008) also argues that moral entrepreneurs, whom he often refers to as ‘moral crusaders’, can also have strong humanitarian overtones. He suggests that their intervention is motivated by the desire to eradicate immorality in society with the hope that this will prevent exploitation of individuals.

For instance, Christian relief organisations may argue that government should criminalise alcohol because it encourages people to engage in criminal activity. Becker (2008) argues that such prohibitionist groups and other moral crusaders have strong beliefs that their actions are good for everyone and they are not imposing their own morals on others. For instance, he argues that abolitionist groups, which fought against slavery, did not only prevent the slave trade but wanted slaves to achieve a better life. Owing to these broader humanitarian values, Becker (2008) argues that moral entrepreneurs lend a measure of credibility to other moral crusaders, despite the fact most are devoted to a single particular cause.

For Posner (1997) moral entrepreneurs are the people with the power to change our moral institutions. According to Posner, they do not do this by employing rational argument. As Posner (1997:42) put it;

Rather they mix appeals to self-interest with emotional appeals that bypass our rational calculating faculty and stir inarticulable feelings of oneness with or separateness from people that are to constitute or to be ejected from, the community that the moral entity is trying to create. They teach us to love or hate whom they love or hate.

Posner is trying to show us that the moral entrepreneurs’ influence can include the manipulation of society’s genuine concerns so that these conflate with their own self interest. The practise of moral entrepreneurship is not limited to moral entrepreneurs, but can be adopted by policy entrepreneurs as well. Or moral entrepreneurs can adopt a policy approach, if a subject requires an aggressive strategy into what Keck and Sikkink (1998) call ‘framing’. For Keck and Sikkink (1998) framing is a conscious, strategic effort by groups of people to popularise a shared understanding of a world issue to motivate collective actions. They go further and argue that networks of entrepreneurs will re-invent old subjects and seek potential

partners in achieving their goals. In other words, they become sources of reference, information and advice. Hence, an inquiry into any public policy process has to describe and analyse the framing aspect, so as to understand the real motives of moral entrepreneurs.

2.4 Policy entrepreneurs

Sabatier (1991) argues that studying a single entity is inadequate to understanding a policy process over any length of time. Studying a single entity can only help us understand the effect of institutional behaviour on rules and the understanding of a specific decision. Hence, this thesis also looks the role of policy entrepreneurs and legislators, and their actions in shaping the policy process.

Sabatier (1991) argues that one of the conclusions that emerged from the post-World War 2 political literature, is that the study of substantive policy processes requires looking at the intergovernmental policy community or what he refers to as a ‘sub-system’ consisting of bureaucrats, legislative personnel, interest group leaders, specialist reporters and researchers. This thesis will also consider the role of the policy entrepreneurs mentioned above, particularly legislative personnel in driving anti-human trafficking legislation. Dozen (2008:309) argues that policy entrepreneurs “work to introduce, translate and implement innovative ideas into public practices”. They establish the setting of new goals, procedures, organisations or programmes in the public sector. The policy entrepreneurs can also act as moral entrepreneurs. Dozen (2008) believes that policy entrepreneurs are more active than reactive. They are recognised for stimulating, rather than responding to, outside political forces. As Dozen (2008:11) observes:

Innovation need not entail invention, however many if not most do not come up with new ideas so much as they develop new ways to package, to market and apply old ideas.

Dozen (2008:12) argues that they mobilise support for their ideas to translate them into action. This mobilisation may involve aggressive fundraising, lobbying, and strategic use of media, widely shared values, or efforts to reframe public debate. For example, we have seen how international institutions such as the IOM, Salvation Army and some local actors such as Molo Songololo, were at the forefront of encouraging the state to pass the anti-human trafficking bill which was rushed to parliament.

A clever marketing ploy was used during the 2010 FIFA World Cup. IOM together with government distributed awareness campaigns pamphlets calling for a 'red card' for human trafficking. In the meantime, the Salvation Army (2010) released a press statement on its website calling for government to speed up anti-human trafficking legislation. They also had government sponsored shelters for victims of human trafficking.

Dozen (2008) argues that an aggressive strategy might frequently involve not only advocacy but what political scientist Kingdon in Sabatier (1991) also calls 'brokerage or windows of opportunity' in which entrepreneurs negotiate among diverse participants and facilitate the 'coupling'. Kingdon's understanding of public policy process is influenced by what he calls 'policy streams'. He identified three streams in policy process. Firstly, a social issue (for instance drug trafficking) is identified as a problem and society is persuaded to prioritise one problem over another. Secondly, a proposal is put forward when ideas on policy issues are being discussed. Lastly, a political process takes place in which political actors and a coalition of advocacy groups influence the decision.

Kingdon in Sabatier (1991) argues that policy entrepreneurs are effective when they wait for the 'windows of opportunity' which he sometimes refers to as 'brokerage' to advance the cause because it provides an opportunity to put pressure on political actors to act on a problem because right then, it is perceived as extremely serious. For instance, the FIFA 2010 World Cup could be described as a 'window of opportunity'. During this period, the anti-human trafficking debate gathered momentum through public debate and media advertising about human trafficking.

The president of South Africa and other cabinet departments such as safety, justice, and youth and disability were also issuing warnings to human traffickers and giving advice to parents to look after their children. This created an atmosphere that could have been perceived as 'moral panic'. Therefore, the 2010 FIFA World Cup provided an opportunity to apply Kingdon's policy streams analysis. The Kingdon method assesses the influence of the moral and policy entrepreneurs to shape legislatures, politicians, government public opinion and bureaucrats. The response from this 'coupling' period is then ascertained.

Scott (1990) might assist us to understand the response during the coupling period and events which unfolded after a reaction. In his book, *Domination and the Arts of Resistance: Hidden Transcripts*, Scott (1990:17) draws us to his hidden transcripts concept to show how subordinate groups “can resist the power of dominant groups by using different methods such as gossiping, the use of disguise, and outright deception, while maintaining an outward impression of enthusiastic consent”. He believes that far more goes on under the surface than we see outwardly in the public arena. The public transcripts thus provide us with a partial truth. Scott (1990) brings us closer to what can be seen as subordinate groups in the power play. In other words, to understand the anti-human trafficking legislation, the response from parliament should get as much attention as that paid to the moral and policy entrepreneurs.

Scott (1990:17) considers how the public transcript is constructed and maintained. He examines the purpose it serves. For Scott (1990) hidden transcript concept recognises both the dominant and the weak because both are caught in the web of socialised roles and behaviour. The South African government could have been seen as strong when it introduced the anti-human trafficking bill in parliament. However, discussions in parliament and the decision by legislators to halt the process exposed the weakness of the government to get its way. In other words, when the dominant discourse or strong institutions impose their will on others, the relatively weak players invariably find ways of resisting.

It is important to note that resistance can also be fuelled by the fact that anti-human trafficking sentiment or crusading keeps re-emerging for different reasons. Countries respond differently. Hence, Scott’s concept of elementary forms of political disguise is critical to assess the nature of resistance. In other words, resistance to a particular dominant view stage exploits the hidden loopholes, while outwardly and in public, it projects the popular view.

Back to the history of human trafficking Morehouse (2008:47) argues that the anti-human trafficking agenda returned to the spotlight of the international community at the 1921 Convention. Concerns were raised about the protection of potential victims from human trafficking because the 1904 and 1910 Treaties and Convention had failed to prevent human trafficking.

According to Morehouse (2008:48) the 1921 Convention was followed by a 1933 Convention for the Suppression of the Traffic in Women of Full Age. There was a 1937 Draft Convention

and a 1949 Convention and for the first time under Article 17 of 1949 Convention, it was acknowledged that public awareness was a part of combating human trafficking. One must note that although the Conventions before 1949 occurred during the time of the League of Nations, the concern was still about the moral misgivings of powerful nations. In addition, the 1949 Convention also reflected the influence of the anti-prostitution moral entrepreneurs because its definition of trafficking was limited to exploitation for sexual purposes. Returning to the pre-1949 Western interest, Yuko (2009) argues that for the first time, the 1921 Convention applied to other territories because there was a concern that European women were being abducted and trafficked for prostitution in South America, Africa and Asia.

The anti-human trafficking agenda also accommodated Western interests after the Cold War. Subotic (2006:36) argues that the end of the Cold War in 1989 brought new threats to Europe, such as the potential influx of migrants trafficked from the former communist countries of Eastern Europe. Anti-prostitution or anti-sex trade moral entrepreneurs and anti-human trafficking lobby groups were concerned that women and children from Eastern Europe and Asia might be sent to Western Europe for sexual and labour exploitation.

The last UN Convention and Protocol (known as the Palermo Protocol) was in 2000 when countries met in Italy to sign the Protocol, to pledge to fight against human trafficking. The Protocol categorises the states into three groups: countries of origin, those of transit and those that are destinations. This thesis will later show that according to the Palermo Protocol, developing countries can act as both countries of transit and origin. Chapter 9 of the Protocol identifies poverty, lack of equal opportunities and underdevelopment as reasons for human trafficking. These three factors are characteristics of the developing world. Hence, developing countries, such South Africa, have to comply with measures imposed by international legal instruments, developed by Western-backed international institutions. The compliance requirement is coded in the statement of purpose in the Protocol. The statement of purpose of the Protocol is to promote co-operation among States Parties to meet the objectives.

Many scholars disagree as to why human trafficking became an urgent issue in 2000. For instance, Christoffersen (2009) argues that human trafficking became a major issue in the United States in 2000 with the passage of the Trafficking Victims Protection Act. She notes that the U.S. government responded by tightening its border security and this was triggered by the threat of terrorism. To some extent, she believes that in the US, anti-human trafficking

law was seen as means of controlling immigrants particularly from developing nations. At the same time, Kim and Chang (2007:4) argue that during the Bush administration, human trafficking was conflated with prostitution.

Other scholars such as Gunde (2000) argue that globalisation triggered new fears about human trafficking into what he termed “the dark side of globalisation”. The idea is that globalisation can also be used by criminals for their own benefit. In other words, criminals can use the existing structures and resources created by globalisation, to facilitate trafficking of people, exploitation of children for labour purposes, and terrorism activity. In fact, governments around the world have to co-operate to deal with these fears (transnational crimes). The nature of the co-operation produces certain kind of actions and affects how sovereignty is practised.

As President Obama (2009) of the United States of America observed in his speech in Tokyo:

And as we are vigilant in confronting this challenge, we will stand with all of our Asian partners in combating the transnational threats of the 21st century: by rooting out the extremists who slaughter the innocent, and stopping the piracy that threatens our sea lanes; by enhancing our efforts to stop infectious disease, and working to end extreme poverty in our time; and by shutting down the traffickers who exploit women, children and migrants, and putting a stop to this scourge of modern-day slavery once and for all.

Besides using the UN, the European countries on their own, have also shown their commitment to be champions of the anti-human trafficking agenda. Almost 46 countries in Europe signed the European Convention on Action against Trafficking of Human Beings signalling their own practical interest in anti-human. The Convention is critical for European countries when participating in international binding agreements with other countries. Members or organisations that are signatories to such a convention must be seen to be promoting their own anti-human trafficking agenda, particularly with countries that do not have domestic anti-human trafficking laws such as those in Africa. The Convention encourages civil society and NGO participation in the implementation of the Convention. The European Union is one of the important funders of institutions around the world that promote its socio-legal and political values.

In her book, *Losing Control in the Age of Globalisation* Sassen (1996) shows that globalisation has given leverage to international institutions to transform the national sovereignty of different countries. Keck and Sikkink (1998) term international institutions 'activists beyond borders'. They argue that these institutions make international resources available to new actors in domestic political and social struggles. As a result, the boundaries between the state relations and their own nationals weaken. The recourse both citizens and the state have to the international system is strengthened. Advocacy networks are helping to transform the practice of national sovereignty. Keck and Sikkink (1998) draw our attention to the misuse of non-governmental organisations in political struggles to target particular campaigns. They argue that international institutions serve as organisational platforms through which norms are promoted along with NGOs and transnational advocacy networks.

For Sassen (1996), the modern world is characterised by the political and financial dominance of the West. States are forced to participate in the transformation of sovereignty through their participation in international binding agreements. For instance, under the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons; and the Palermo Protocol; the South African government is obliged to put domestic legislation in place to tackle human trafficking. The Palermo Protocol was a product of the Washington-based anti-prostitution bodies and the West (Murray 1998 & Doezema 1999). It is argued that the focus is too narrowly on sexual exploitation in a way that both genders victims (victims are mainly female) and diverts attention away from other forms of trafficking. The process to put domestic anti-human trafficking legislation in place demands co-operation from other member states and relevant information from international institutions.

Keck & Sikkink (1998) argue that international bodies employ these binding agreements as a human rights issue. Hence in public, their work is not seen as motivated by professional or material concerns, but by a shared values and a common discourse. As Christoffersen (2009:6) also notes: "human trafficking becomes a specific phenomenon which evokes moral outrage partly because slogans such as the 'crime that shames us all' forms part of the discourse - and it is something more damning when a crime is associated with the worst of its kind".

According to Morehouse (2008:27) today the UN considers human trafficking as one of the top three crimes that needs to be tackled by the international community. Hence, human trafficking remains part of the global agenda and governments are under pressure from international institutions, religious groups and powerful states - particularly the United States of America - to develop and implement laws to fight it. These laws will have three key elements: preventing human trafficking, protecting victims of human trafficking and prosecuting traffickers. The U.S. exerts its influence on human trafficking legislation by threatening sanctions if countries do not showing commitment to fighting the scourge of human trafficking (see the U.S. State Department 2012).

2.5 The anti-human trafficking legislation process in South Africa

The South African parliament decided to put on hold the discussion about the Prevention and Combating of Trafficked Persons Bill after it was tabled in National Assembly in March 2010 by the South African government. The response by parliament can be seen as what Scott (1990) referred to as 'shunning'. Scott's 'shunning' must be understood in context of the art of resistance employed by those that are perceived as weak. He argues that rather than openly rebel, the weak adopt a 'safer course' so as not to appear to be defying the political structure of domination. The bill has since been signed into law by the president of South Africa in August 2013. The law, in its current form, is a comprehensive legislation with wide range of measures including prevention, protection, prosecution, public awareness and victim assistance programmes. According to the Minister of the Department of Justice, Jeff Radebe (2010) other protective measures in the bill include:

- The prohibition of the prosecution of victims who have been certified as victims of trafficking;
- The granting of a recovery and reflection period and, under certain circumstances, the issuing of temporary residence permits and permanent residence permits to foreign victims of trafficking;
- The prohibition of the summary deportation of foreign victims;
- Proper repatriation processes, taking cognisance of the safety of victims during this repatriation process;

- Proper processes when returning a victim who has been trafficked within South Africa, taking cognisance of the safety of the victim; and
- The payment of compensation to victims of trafficking.

Any person found guilty of human trafficking can be prosecuted under the following acts: the Prevention of Organized Crime Act (POCA), 1998; the Children's Act, 2005 (which provides for the criminalisation of the trafficking of children); the Criminal Law Sexual Offences and Related Matters Amendment Act, 2007 (which contain provisions that criminalise trafficking in persons for sexual purposes); and the Immigration Act of 2000 (which prosecutes someone who brings a person to the country without proper documentation).

The moral entrepreneurs (such as the Alliance of Christians Against Trafficking and the Family Policy Institute) and anti-human trafficking lobby groups (IOM, Molo Songololo, and Stop Trafficking of People – a Christian organisation) believed that South Africa, as a signatory to the United Nations Protocol on Trafficking in Persons, should pass specific legislation which criminalises human trafficking because the laws at the time were not sufficient to deal with the scourge of human trafficking.

The IOM and Molo Songololo used their heavily-biased and methodologically unsound research reports to shape their arguments in support of the bill (see Monson and Richter 2010:3). Vigneswaran (2012) attempted to clarify the methodological dilemma by those he refers to as 'believers'. For Vigneswaran (2012) research methods employed by organisations that support anti-human trafficking have fallen short of scientific reliability because they often argue that it is difficult to produce empirical evidence because victims are invisible and reluctant to speak. As a result, research reports are accepted by policy makers as credible evidence without critically looking at the interests of the powers involved in the public legislation process. Hence, the invisibility of human trafficking is used as a scapegoat to argue for more laws. The two organisations (IOM and Molo Songololo) involved in the drafting of anti-human trafficking law in South Africa, cannot critically look at themselves when they are involved in government awareness campaigns about human trafficking.

On the one hand, there is IOM, which has funding from the West, and cannot be seen as critical of the projects of the West. IOM is also benefiting from partnerships with the South African government. On the other hand, there is Molo Songololo, known for its advocacy work for children. Its mission is captured correctly on its website:

Molo Songololo's advocacy strategy aims to influence law and policy makers, those who manage and distribute resources and programmes for children; and those who make decisions that affect the lives of children.

Molo Songololo adds that it can achieve this by using media to raise awareness on the plight of the children and participate in parliamentary law reform processes. Its key projects of awareness raising and advocacy are driven by preventing child sexual exploitation and trafficking. Molo Songololo's website indicates that the organisation prides itself in being involved, from 2002, in drafting the anti-human trafficking bill provisionally submitted in 2010 and finally passed in 2013. It also mentions that it has raised awareness and educated key role-players about human trafficking. It has created dialogue amongst key role-players in government and civil society on the nature, scope and extent of trafficking; and the need for intervention. Molo Songololo's advocacy has included law reform due to the perceived need for comprehensive trafficking legislation. It advocated for the protection of victims and provision of assistance to victims. Similar to IOM, Molo Songololo has established its footprint in the human trafficking arena, particularly around the sexual exploitation of children.

It is hard then, not to concede that Molo Songololo's interests in anti-human trafficking legislation were motivated by a narrow agenda against sexual trafficking. Their report of 2005 has partly sought to justify this agenda (see Chapter 7 of Gould & Fick 2008). This is despite the fact that the report also focused on trafficking for labour exploitation.

Gould & Fick (2008) argue that Molo Songololo drew wide conclusions about the causal factors of trafficking based on anecdotal evidence from a sample of 10 people believed to be victims of human trafficking. Furthermore, the authors believe that the advocacy body was confusing trafficking with child prostitution, whereas being in prostitution does not mean you have been trafficked as well. Gould & Fick (2008) do not analyse the influence of transnational networks and their power interplay with parliament, government and the

creation of moral panic during the build up to the 2010 FIFA World Cup. One must also note that the project was funded by the U.S. and that this country is promoting its own anti-human trafficking discourse. The U.S. is encouraging countries around the world to develop domestic anti-human trafficking laws, in line with U.S. interests, and in a way that emphasises human trafficking for sexual purposes.

In the meantime, the SALRC is a South African government-funded body which advises a minister or government on specific legislation. The SALRC's role is to join a bureaucratic process that involves consultations, presentations and overseeing compliance with bills protocols so that government is seen as transparent and democratic in achieving its goals. SALRC did so when it helped develop the anti-trafficking bill and when it conducted legal research. It could be argued that the SALRC's objective in the legislation process was to make sure that government complied with international protocols in the way it put a domestic anti-human trafficking law in place. Therefore, the SALRC could not be seen as motivated by interests of moral and policy entrepreneurs.

However, there is little in SALRC Issue Papers that shows that the protocols were the main driving force for the tabling of the bill during the run-up to the 2010 FIFA World Cup. During this time (2010), the protocols used were those that had been agreed upon 12 years previously when governments met in Italy. In December 2000, 148 countries gathered in Palermo Italy to attend a conference opening of the UN Convention against Transnational Organised Crime and most of them signed this Convention.

Of the 148 countries present, 121 signed the Convention, whilst over 80 countries signed the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. Leggett (2004) indicated that South Africa signed both the Convention and the Palermo Protocol on 14 December, 2000 and the government was praised by some observers for this first step towards the acceleration of the human trafficking legislation process.

In March 2004, while reviewing the Child Care Act and the Sexual Offences Act, the SALRC conducted research on the causes of human trafficking with a view to advising the minister on the drafting of anti-human trafficking legislation (see SALRC Issue Paper 25, trafficking in Persons 2004).

The SALRC report (2004) identified poverty as one of the push factors for human trafficking. Yet the SALRC approach in moving forward was to advise government on the effectiveness of punishing traffickers and the practical challenges in successful prosecution. Little was discussed about solving the problems of poverty and unemployment. The debate and campaigns during the run-up to the 2010 FIFA Soccer World Cup were pre-occupied with the sexual exploitation of women and children. If campaigns included resolving the problem of poverty, little was reported on this. Therefore, although the SALRC cannot be faulted for its content in preparation for the bill, its approach to kick-start the legal research focussed on sexual exploitation of children and prostitution. The SALRC ignored other aspects of trafficking in their reports.

Critics of the bill, including some Members of Parliament, and other bodies such as the ISS, slammed government for the over-emphasis on prostitution. It appeared that South Africa wanted to appease the international visitors during the FIFA 2010 Soccer World Cup and government simply ignored other contentious issues of the bill. This point is made by Bonthuys (2012) when she argues that the sense of international scrutiny of how a country treats its women is heightened by the spectacle of the World Cup. A host country wishes to be highly regarded by visitors and the international media.

For Gould & Fick (2008) the South African government had to understand the nature of the problem before it could propose an anti-human trafficking bill. Speaking to the *Irinnes* (2011) news wire service, Palmery in *Irinnews* argues that “without understanding the nature of the problem... what kinds of trafficking we're seeing... “it is very difficult if not impossible to write legislation. Pharoah (2006:59) from the ISS argues that research on human trafficking in South Africa has generally adopted broad and ill-defined notions of trafficking that appear to make little distinction between trafficking, prostitution and child abuse. As a result, questions have been raised about the data's usefulness for the design of policy and legislation.

Therefore, systematic research is required on the public policy process. Research needs to examine the use of data by different actors in anti-human trafficking campaigns. Campaigns to be examined include the anti-human trafficking bill but also campaigns that complement or that drum up anti-trafficking activities. At least 40 000 people were identified as potential victims of trafficking during the 2010 FIFA World Cup. The number has been rejected in

many forums but it continues to be part of the debate. The 2010 FIFA World Cup became an opportunity to peddle these numbers. Hence, the hype around these numbers became a way of thinking about the World Cup and human trafficking. The idea in the public domain was that large numbers of people might be trafficked from around the world to South Africa and kept as sexual slaves by brothels. The state became part of this link because it had little to gain in rejecting the argument. The Minister of Justice, Jeff Radebe (2010) was quoted on the Defence Web online news website as saying:

This bill has got nothing to do with the World Cup ...it's been a work in progress since 2003. Of course 2010 will come with its challenges because of the World Cup and we have a duty to make sure the country is safe.

According to Richter & Monson (2010) anticipation of an increase in trafficking especially for sexual purposes, ahead of the 2010 FIFA World Cup, and media attention on the subject put pressure on South Africa regarding its ability to deal with human trafficking. During this period the Justice and Constitutional Development Portfolio Committee (2010) in parliament released a statement on its parliamentary website raising concerns about the bill being rushed through parliament. The statement read:

We think that the bill is a step in the right direction. Trafficking in persons flourishes because it is extremely lucrative and as traffickers are rarely held accountable for their actions, there are relatively few risks attached. It is estimated that up to a million people are trafficked worldwide each year, of which approximately 80% are women and children trafficked for the purposes of sexual exploitation. But people are trafficked for other reasons too, such as forced labour, organ harvesting, etc. It is unfortunate that South Africa does not yet have a comprehensive legislative framework to address human trafficking but legislation of this type is complicated, requiring that a number of affected government departments give their input. However, the committee is satisfied that although fragmented and not comprehensive, there is existing law that can be used to prosecute traffickers. A particular concern is that the World Cup will see an increase of trafficking for sexual purposes. The Criminal Law (Sexual Offences and Related Matters) Amendment Act, which came into operation in December 2007, for instance, specifically criminalizes trafficking for sexual purposes. (Justice and Constitutional Development Portfolio Committee: 2010)

The Portfolio Committee asked the Department of Justice to bring other departments affected by the legislation on board to compile a report. It wished to be briefed on operational plans to ensure that existing laws would be used to prosecute traffickers successfully. The IOM, which was instrumental in running training workshops about human trafficking, was drumming up support for pushing government to pass the bill.

Local newspapers also quoted IOM's Programme Manager, Mariam Khokar in Hudleston (2010:1) about counter trafficking as saying: "The group had provided technical input in the drafting of the bill, and looked forward to its being passed and signed".

It seems government was on the verge of succumbing to international pressure and anti-human trafficking bodies. Members of the cabinet including South African president, Jacob Zuma were also in the political mood to clamp down on human trafficking. The media was bombarded with the anti-human trafficking debate and stories of human trafficking from the 2006 FIFA World Cup in Germany. The biggest broadcaster in terms of audience numbers, the South African Broadcasting Corporation (SABC) ran a social responsibility programme to fight against human trafficking.

2.6 Methodology

This research is a qualitative study and its intention is to understand the public policy process which led to the tabling of the Prevention and Combating of Trafficking in Persons Bill. It asks why parliament stalled the process when legislators refused to pass the bill during the build up to the 2010 FIFA Soccer World Cup.

Research for this thesis comprised of one-on-one unstructured, in-depth interviews with the IOM, the Salvation Army, the SALR C and the ACDP. In-depth interviews were critical to understanding what causes non-governmental organisations to embark on anti-human trafficking campaigns. The research probed how they supported efforts to criminalise human trafficking particularly during the build up to the 2010 FIFA Soccer World Cup. All participants gave oral consent to the interviews.

The researcher did ethnographic work in parliament. This comprised attending two sessions in parliament and observing when the National Prosecuting Authority presented their input on the bill.

The two sessions that the researcher attended were legalistic and occurred after the 2010 FIFA Soccer World Cup. The tone of the discussion could be described as calm, in an atmosphere of low media coverage of anti-human trafficking legislation. The sessions were poorly attended; there were few MPs in the Portfolio Committee on Constitutional Development who showed an interest in the bill. The discussion assisted the researcher in understanding the technical work that needs to be completed before passing a bill. Field notes were written from these observations in parliament.

Relevant documents such as a submission to the Portfolio Committee on Constitutional Development and Justice and audio recordings (of meetings of the Portfolio Committee during the build up to the FIFA 2010 World Cup) were considered for analysis. The researcher analysed relevant government documents, secondary data on human trafficking, newspaper articles and advertisements for anti- human trafficking campaigns. The researcher also listened to audio of the meetings of Portfolio Committee of Constitutional Development and Justice, particularly of the discussion during the build up to the 2010 World Cup.

The audio recordings collected were downloaded from the Parliamentary Monitoring Group. The recordings were critical in understanding the changing discourse of human trafficking and the atmosphere during the build up to the 2010 FIFA Soccer World Cup. The audio was extremely useful because the authors were more engaging about their thoughts on human trafficking. As Hammersley et al (2007:3) note, ethnographic studies are characterised by “gathering data from a range of sources including documentary evidence of various kinds”. In addition the sources assisted the researcher to shed light on different ideas which informed the basis for their (government and interest groups) arguments in support for, or against, the bill.

Becker et al (2004:1) argues that participant observation is central among methods applied in interpretative research.

As Becker et al (2004:1) observe:

Whatever its origins, ethnography is useful in a wide range of settings for research questions that seek to explore the meanings of particular political practices, concepts or processes to situational actors, often in order to illuminate a wider-ranging or more theoretical issue of political concern.

They go on to argue that one needs to understand how governmental administrators, policy makers or legislators think about and implement the decisions. These aspects can partly be answered by a combination of qualitative methods.

The unstructured interviews with NGOs and a member of opposition party in parliament allowed the researcher to be flexible in discovering new themes that he might not have not anticipated or conceptualised in his original thoughts about the research. Secondly, different scholars adopt different definitions of the meaning of an unstructured interview. Unstructured interview allows the researcher to be flexible. It assists the researcher to be open to other possible explanations that might have not been conceived at the initial stage of the research.

For Patton (1990) an unstructured interview is the extension of participatory observation. This, he argues, is precisely because the unstructured interview relies entirely on spontaneous questions which emerge from the natural interaction during the interview. And this is crucial for researchers because it exposes the researcher to new themes that might arise from the interview. The unstructured interviews assisted the author of this thesis to understand a complex policy like human trafficking. The researcher/author was able to recollect what was conceived during the early stage of the policy process, until the parliament stalled the process during the run-up to the 2010 FIFA Soccer World Cup.

CHAPTER 3. FINDINGS AND ANALYSIS

3.1 The manufacturing of moral panic before the 2010 FIFA World Cup

This section will attempt to show that ‘human trafficking’ became the portmanteau of all social ills during mega sporting events. ‘Porous borders’ and ‘trafficking of women and children’ were some of the key subjects employed to create anxieties about the arrival of visitors from around the world. The manufacturing of anxieties was an attempt by anti-trafficking organisations to push government for a speedy resolution of anti-human trafficking legislation.

The 2010 FIFA Soccer World Cup in South Africa marked an important shift in understanding why anti-human trafficking legislation became an urgent matter and how parliament stalled the process when it looked almost certain that the anti-human trafficking bill would be bulldozed through. ‘Moral panic’ is a very important concept in aiding our understanding of why the anti-human trafficking bill was tabled in parliament during the run-up to the 2010 FIFA World Cup. The manufacture of moral panic must be understood over a period of time. Various events, particularly the 2010 FIFA World Cup provided a perfect stage to unravel what was manufactured behind the scenes.

The socio-economic and political conditions of a country might suppress conditions that give rise to moral panic. However, events that attract public interest might bring moral panic onto the mainstream national or international public platform. Rohloff and Wright (2010) pointed out that although moral panic is a transient phenomenon, conditions that feed panic demand analysis.

Access to funding, strategic government discussions and endorsement of anti-human trafficking projects are the key aspects that compel policy and moral entrepreneurs to adopt moralistic arguments. This was particularly the case for the IOM. For instance, Vigneswaran (2012) argues that the organisation used the trafficking issue to establish institutional presence and slowly diversified its sources of funding while the trafficking issue was ‘hot’.

Quoting from the IOM’s own financial statement, Vigneswaran (2012) shows that from 2003 to 2009, the budget allocation for the Southern African Counter Trafficking Assistance Programme, declined from 64% to 9% putting financial pressure on the IOM. However,

Vigneswaran (2012) argues that in 2010, the organisation won new contracts when the U.S. and EU made funding available for the training of South African government officials to comply with the country's pending trafficking legislation. In other words, funding was more accessible for anti-human trafficking campaigns and projects because the South African government had adopted the language of the moral entrepreneurs and created an atmosphere of crisis.

The extract from the interview this thesis conducted with an IOM researcher in Pretoria (2011) supports this point about funding consideration.

Some of the programmes that we had included for instance the one with the NPA. It was part of building capacity and awareness and it was funded by EU. It was part of public awareness. Yes we continued with the programmes until the end of 2010 and after that there was a lack of funding. We do not get funding from government and it's only international funding that keeps the programmes going.

In addition, an attempt to automatically link prostitution to human trafficking was made to mobilise the international community. It also mobilised South Africa, a largely conservative society, to force government to pass the anti-human trafficking bill. The conflation of prostitution and human trafficking was done in both public awareness campaigns and in formal training organised by those who shared similar views with the anti-prostitution lobby.

The following extract from the interview this thesis conducted with the Salvation Army social worker in Pretoria (2011) shows how prostitution is cited as a main reason for human trafficking.

Human trafficking and prostitution are linked although they are different but anyone can decide for herself to be a prostitute whether they work for themselves or a pimp but human trafficking can be easily linked because the pimps sell these girls to one another... that is one thing that we learnt from this training.

Religious conservative groups such as the Salvation Army were concerned that sex work would increase during the 2010 FIFA World Cup. For instance, in January 2010, the Salvation Army launched a helpline to help victims of human trafficking during the World

Cup (IOL 2010¹). The news wire quoted the Salvation Army Anti- trafficking Task Team co-ordinator saying, “We don't want to create hype around 2010 but we fear trafficking will increase for purposes of commercial sex work”. In July 2010 the organisation reported that it only received 10 calls. The results pointed to the sensationalising of the problem of human trafficking in South Africa because few cases were reported on this line.

Fears were exploited and the association of trafficking with prostitution was to force government and anti-prostitution bodies to actively police prostitution and brothels. They limited the rights of sex workers. For instance, Harper et al (2010) reported that government and FIFA ignored recommendations from human rights activists and NGOs to promote the rights of sex workers. The recommendations had urged government to stop sex work related arrests. Instead Harper et al (2010) argues that during the run-up and the period of the 2010 FIFA World Cup, sex workers could not even access the few services that were normally available to them.

The 2010 FIFA World Cup became a perfect theatre to stage moral panic. In 2010 the Salvation Army also launched a campaign known as Red card human trafficking (see *Salvation Army blog* 2010²). The organisation argued that school children were vulnerable to trafficking because schools would be closed during the World Cup and children needed to be housed safely to protect them from human trafficking. Pamphlets were distributed in townships. The Salvation Army reported that two cars came and abducted five township girls. Their disappearance was linked to trafficking. However, no further evidence of trafficking was produced.

The whole world had its eyes of South Africa and it was the first time for an African country to host such prestigious event. The South African government, in being part of Africa, could not rebel against an international norm. It had to be seen to be doing something in the eyes of a world that still viewed Africa as a continent haunted by backwardness (abject poverty, underdevelopment and deadly diseases). As Vigneswaran (2012: 09-12) put it, “here, the government was keen to ensure that its moment in the international limelight, where it hoped

¹ IOL 2010 Anti-Trafficking Hotline Launched Available from <http://www.iol.co.za/news/south-africa/anti-trafficking-hotline-launched-1.471677> [accessed on 11October 2014].

² Salvation Army (2010) Salvation Army World Cup Army Cup Campaign Makes a Big Noise <http://www.salvationarmy.ca/2010/06/21/salvation-army-world-cup-campaign-makes-a-big-noise/> accessed on 11 October 2014

to present itself as a beacon of humanitarianism and hope on the African continent, would not be sullied by the disparaging image of tourists flocking to South Africa and exploiting sex slaves”.

As this thesis has indicated, the moral panic had its roots before the 2010 FIFA World Cup when policy makers in government were searching for empirical evidence to justify the need for domestic legislation, instead of depending solely on international binding protocols. The anti-human trafficking bill is one of the few pieces of legislation that has not been sparked by South African society’s outrage. Anxiety had to be produced elsewhere. Hence, lobbyists had to produce research in support of government legislative action. For instance, Gould, Richter & Palmery (2010:38) said in respect of the government report produced by the HSRC (2010):

The report therefore creates the impression that trafficking is an overwhelming problem in South Africa, that it is evident everywhere and that it requires a massive social response. This fuels fear-mongering, sensationalism and public anxiety about trafficking and attracts attention away from other equally serious social and economic problems.

The report became an important reference for government institutions when drafting the bill. However, this thesis acknowledges that despite the criticism levelled at research produced by the HSRC for anti-human trafficking bodies, the HSRC remained a central part of understanding of the problem of human trafficking in South Africa. The HSRC played a role in creating anxiety, uncertainty and fears. The South African government and the media also participated in fear-mongering. Parliament became the last institution to resist the sensational claims of increased human trafficking. Nobody seemed clear about why the bill was placed before parliament during the run-up to the 2010 FIFA World Cup. However, parliament had to resist by citing legitimate reasons instead of openly rebelling against government and international norms.

The thesis starts this section by arguing that the hosting of 2010 FIFA World Cup raised fears about crime. This fed the moral panic during the anti-human trafficking discussions in parliament and the reactions to it. For us to fully understand and analyse the actions and behaviour of anti-trafficking bodies, parliament and government, during the run up to the 2010 FIFA World Cup, fears of crime could not be ignored. The world, particularly the West,

had doubts about the safety of visitors during the 2010 World Cup. Rohloff & Wright (2010) argue that a 'moral panic' is a sociological concept that seeks to explain a particular type of overreaction to a perceived social problem. According to Rohloff & Wright (2010) the principal aim of the concept is to expose the processes involved in creating concern about a social problem. Often a concern bears little relationship to the reality of the problem. Nevertheless, it provides a basis for a shift in social and legal codes.

Moral panic is created by moral entrepreneurs who act as 'claim makers'. It is argued that the groups that are part of production of panic, the 'claim makers', consider themselves to be humanitarians and to be on a mission to undermine the deviant status of the 'folk devils' (see Zajdow 2008). In other words, their mission is to fight against people portrayed as evil. According to Kitsuse and Ibarra in Zajdow (2008:641) claim makers by their nature make claims and air them through media using "various rhetorical constructions such as appeals to equality, fear, and tolerance, calamity, and loss".

For instance, the IOM and HSRC can be seen as claim makers. Critics and some civil society organisations (CoRMSA) have argued that the international NGOs (including IOM) and local institutions such as the HSRC, exaggerated their data on human trafficking in order to put human trafficking on the legislation agenda. For instance, Gould, Richter & Palmery (2010) argue that the HSRC (2010) research report constructed unsubstantiated claims that painted a distorted view of the problem of human trafficking in South Africa. Gould's concern is the methodology and the evidence used to arrive at findings. For Gould, Richter & Palmery, the HSRC (2010) reliance on hearsay cannot provide a sound basis for understanding a widespread problem of human trafficking in South Africa. For instance, HSRC (2010) acknowledges that it used covert means to get access to some of the information relating to the activities of human trafficking. The HSRC (2010) argued that South Africa is a destination country for trafficked women from Asian and European countries. Crime syndicates are using South Africa for international trafficking. It went on to say that some women are kept in houses next to the OR Tambo International Airport. For instances, the HSRC (2010:13-15) report presented cases that were before the courts as human trafficking though there was no conviction at the time of the report.

The evidence was written like a movie script and this made it hard to believe. It was based on hearsay from an official who could not be identified. In addition, there were few cases cited.

The HSRC should have requested particular court cases that were definitely deemed as human trafficking to support their assertions.

Linking organised crime to human trafficking in South Africa is one critical post-apartheid crime narrative. It helps us understand the construction of fears during mega events. Crime during the 2010 FIFA World Cup was one of the top concerns of the international community. Therefore, human trafficking was linked to other crimes that local people have strong sentiments against. For instance, Steyn et al (2009) in Swart (2010:2) argue that:

The key issues in the build up to the 2010 FIFA World Cup were the negative impacts of high levels of crime in South Africa and the concerns is that this was likely to deter tourists from visiting the country.

This narrative stems from a history of violence and crime in South Africa. This cannot be ignored because anti-human trafficking bodies particularly the IOM (2003) have historically linked the abduction of Sara Baartman to the problem of human trafficking in South Africa. In other words, it is becoming a norm to link violence (past and present) to human trafficking. This is despite the fact that there is no direct link between violence and human trafficking. The Sara Baartman context was different from today. Historically, South African society has experienced moral panic particularly during the 1976 Soweto uprising. Evans's book on the culture of violence in South Africa traces it back to the formation of segregation. For instance, Evans (2009:2) focused on state violence and lynching as a form of punishment against liberation movements. Violence was accepted as a means of settling scores between government and liberation movements. Interpersonal violence was also rife. In other words, Evans' book tries to show us that violence, including crime, has long been part of South African society.

Hence he calls his book *The cultures of violence: Racial Violence and the origins of segregation in South Africa and the American South*. Violence is a norm that the nation has learned to live with. This is not true for international community. They see South Africa as an abnormal society when it comes to safety and security. The country is seen as violent and a hub for criminals and criminal activity.

The local and international media became a platform, not only to raise false alarms, but also to put pressure on government to fast track the anti-human trafficking bill. A number of Western countries, particularly Britain, had doubts about the safety and security aspects of the 2010 FIFA World Cup. The doubts were primarily expressed in international media reports, predominantly the BBC and CNN. For instance the BBC³ (2009) ran a forum which discussed safety concerns about the 2010 FIFA World Cup.

Locally, anti-human trafficking attracted media and some media houses. Radio 702 and the SABC ran anti-human trafficking awareness advertisements while the SABC also had joint social responsibility programmes in raising awareness about human trafficking. The advertisements also gave out call centre numbers that victims could contact.

The media became a partner in the moral panic movement creating a sense of uncertainty about the safety of women and children before the FIFA 2010 FIFA World Cup. Rohloff & Wright (2010) argues that the role of media is to reinforce a sense of expectancy. Media gives shape to rumours and ambiguous situations. These were legitimate concerns particularly in a country which was failing to protect its own citizens. For instance, SAPS crime statistics of 2009 showed that the South African murder rate was still high as compared to other countries.

Apart from tabling the anti-human trafficking bill, government, together with anti-human trafficking bodies, responded by embarking on awareness campaigns about human trafficking. This had unintended consequences. It gave meaning to the rumours and exaggerations presented by the moral entrepreneurs whose main goal was to see government passing the anti-human trafficking legislation. A bill to tackle human trafficking was finally tabled in parliament. Government and its officials were now starting to talk openly about human trafficking in media and on public platforms. The president of the country went further and issued a media warning about the dangers of human trafficking.

In his chapter, *Deviance and Moral Panics*, Cohen in Rohloff & Wright (2010) argues that 'moral panics' are characterised by a condition where a persons or group of persons emerge to become defined as a threat to societal values and interests. He argues that this group is

³ BBC. 2009. 'Focus on African Magazine'. Available from www.BBCSPORT.co.uk [Accessed: 09 February 2014]

castigated and presented in a stereotypical way. Cohen looks at post-war Britain and the moral panic created by deviant behaviour emerging from the youth of the working class families. According to Cohen in Rohloff & Wright (2010), much of this deviant behaviour included violence.

As Cohen in Rohloff & Wright (2010:13) put it,

The moral barricades are manned by editors, bishops, politicians and other right thinking people. Socially accredited experts pronounce their diagnosis and solutions; ways of coping are evolved or (more often) resorted to; the condition then disappears, submerges or deteriorates or becomes more visible.

Cohen is alerting us to the fact that conditions of moral panics are not stable. It is critical to assess the events of why and how conditions shape panics. The South African government had to closely monitor how it was managing human trafficking while the preparations for a prestigious international event were being made. The crisis phase kicked in and human trafficking became a new crime that government could not afford to tolerate. It had to keep foreign visitors safe.

Government lost its sovereignty in the legislative process, and ultimately its voice in the process, and became part of what Ham (2011) described as ‘myth and rumours’ about human trafficking. The voices of the victims and South African society were represented by undemocratic NGOs whose voices were amplified by government partnership. For instance, 17 days before the kick-off of the 2010 FIFA World Cup, government partnered with NGOs such as IOM to launch the *Red Card Human Trafficking* awareness campaign without understanding the problem or providing reliable data. During the launch the Justice Minister Radebe (2010) was quoted as saying:

As we look forward to the beautiful game as one of the sport’s greatest protégé the great Pele of Brazil would call it, unfortunately there may be rotten elements who will try to tarnish this great and noble event. I am here referring to those criminal elements who do not like to see good things but act as scavengers at the expense of the common good of society.

The Justice Minister went on to say that South Africa is seen as both a destination and transit zone for trafficked persons. This statement is similar to the view expressed in the IOM (2003) and HSRC (2010) research reports. The latter was criticised as being methodologically flawed and dependent on anecdotal evidence.

During this period, it was claimed that 40 000 people might be potential victims of trafficking if they travelled to South Africa. Ham (2011) argued that this was partly done to attract media and public attention. Despite the fact that these numbers were obviously flawed, they continued to shape the debate about human trafficking, whether it was to debunk claims or support them.

The Salvation Army ran anti-trafficking campaigns and joined government in the launch of the 'Red card human trafficking' campaign during the 2010 FIFA World Cup. Historically, this London based Christian relief organisation has been at the forefront of moral entrepreneurs who have opposed prostitution and sexual abuse of children. The organisation continues to champion tougher measures against prostitution.

As Gould, Richter & Palmery (2010:7-10) also note, "One thing that is becoming clear from scanning the vast body of writing is that trafficking may be a term describing specific activities, it is also a term used to garner support for various agendas such as preventing migration, stopping organised crime or eradicating sex work". In January 2010, a local news wire known as *Bizcommunity*, its writer da Silva (2010)⁴ claimed that it had done investigations and found that human traffickers had been using the 2010 FIFA World Cup as 'bait' to lure people to work in South Africa at construction sites and accommodation establishments, and as escorts and stadium marshals. Even actors that did not report on trafficking directly could widen unfounded claims because anti-human trafficking accommodates all sorts of myth. Gould & Fick (2008) argues that the discourse of anti-human trafficking agenda in South Africa was driven by anti-prostitution bodies who wanted to see the total ban of prostitution. This was despite the fact critics such as Gould & Fick (2008) argues that some sex workers voluntarily entered prostitution to earn income and are not trafficked.

⁴ da Silva, I. 2010. 2010. 'FIFA World Cup boosts Africa's human trafficking'. Available from <http://www.bizcommunity.com/Article/196/147/43704.html> [Accessed: 07 April 2014]

Ham (2011) argues that the human trafficking debate is an opportunity to raise funding. In addition Ham (2011) also believes that other bodies exploited the weakness of the state by challenging South African law enforcement to do more about criminalising sex workers. In her paper, *what's the Cost of a Rumour*, Ham (2011) argues that despite the lack of data proving a link between a sporting event and a rise in trafficking for sexual exploitation, sensationalism around human trafficking continues to attract media, politicians and NGOs. The debate around trafficking for sexual purposes sparked confusion about prostitution, drugs and trafficking. The following extract from the interview this thesis conducted with a social worker from the Salvation Army (Pretoria, 2012) shows how the anti-sex trade agenda is confused with human trafficking:

Human trafficking and prostitution are linked although they are different but anyone can decide for herself to be a prostitute whether they work for themselves or a pimps but human trafficking can be easily linked because the pimps sell these girls to one another ... and that is where human trafficking comes in, that is one thing that we learnt from these trainings.

Prostitution and human trafficking go together. I think people who are against this human trafficking campaign harbour other agendas because why they are they not opposed to people being sold. I don't care about what are they saying because people are not property. But again it's all about different cultures, backgrounds and now we have a lady with four children from Swaziland in our shelter but she was not a human trafficking victim.

When she was 14 her mother decided that she has to get married and then her husband died. She was told that she cannot be alone and has to marry another man. She did not know any of the men. So some people come from the rural areas and they are controlled by the uncles. And some have bad friends abused and caught up in drug habit and leave for the next drug. They can sell their bodies. So these people have other motives.

The confusion is clear. There is also desperation to put prostitution on the agenda of law makers and in the public domain. For Gould & Fick (2008), this narrow agenda has been influential in the political process of drafting the Palermo Protocol. She says critics of this narrow agenda have pointed out that anti-prostitution bodies have succeeded in painting prostitution as an abuse against women and children, and should be abolished. As a result, the

Palermo gathering adopted the anti-prostitution lobby's definition of human trafficking. Hence, the legislative process against human trafficking has been characterised by adopting anti-prostitution language when dealing with human trafficking. So the legislative process has become a contested space for various anti-human trafficking bodies. The motivation was to use anti-trafficking law to criminalise prostitution.

3.2 Self interest of moral entrepreneurs and the desperate quest for anti-trafficking legislation

This section will examine how the self-interest of non-state actors, particularly the IOM, is motivating and driving the humanitarian justification for anti-trafficking legislation. One needs to understand the moral humanitarian regime in order to grasp how and why this humanitarian regime is used for anti-human trafficking legislation. Humanitarian interventions are seen as opposition to politics and objective. The IOM's anti-human trafficking project, known as the Southern African Counter Trafficking Assistance Programme (SACTAP), plays a huge role in positioning the organisation as a neutral role player. It takes this neutral position in anti-human trafficking activities in the region, particularly in South Africa, which has attracted a lot of media attention and donor funding.

For instance, in the interview conducted for this thesis with the IOM researcher in Pretoria, the interviewee argues that the organisation is not interested in the domestic politics of the country. IOM's role is to provide capacity to governments that seek to prevent human trafficking. The programmes under SACTAP (that are disguised as primarily driven by the moral motivation of assisting victims of human trafficking) provided the organisation with an opportunity to be part of the government Task Team. This team developed a National Strategy to prevent and respond to Human Trafficking for Sexual Purposes.

The Task Team provided assistance to victims of trafficking, and was also peopled by a number of international NGOs that did advocacy work around migration and trafficking. The IOM website had established a helpline for the reporting of cases of trafficking in persons. The IOM adds that it still provides victims of trafficking who join its Southern African Counter-Trafficking Assistance Programme with safe accommodation, medical and psychosocial assistance, and assistance in returning to their home countries. IOM assistance extends the rescue mission by providing training on victim identification and assistance to a

number of law enforcement officials and civil society representatives. The programmes are based on victim saving. This makes it difficult to morally or politically challenge the anti-trafficking agenda.

For Katzenstein (1996) justification for humanitarian intervention is not important. What matters is motivation. Furthermore, Katzenstein (1996:4) said:

It is true that justification does not equal motivation. Humanitarian justifications have been used to disguise baser motives in more than one intervention. More frequently, motives for intervention are mixed; humanitarian motives may be genuine but may be only one part of a larger constellation of motivations driving state action.

Although the humanitarian intervention theory has been used to analyse military intervention in troubled states, it is also useful to understand the reasons behind urgent socio-legal interventions, imposed and funded by the non-state actors such NGOs. The moral panic manufactured during the build up to the 2010 FIFA World Cup gave birth to humanitarian practises that mobilised the South African government for a particular action against human trafficking.

Bonthuys's research report titled *The 2010 Football World Cup and the regulation of sex work in South Africa of 2012* details the moral panic that created unrealistic fears about sex trafficking which led to the harassment of sex workers in Cape Town. The panic response started when the South African government suddenly tabled the anti-human trafficking bill three months before the start of the 2010 FIFA World Cup. For Vigneswaran (2012) this was in sharp contrast to the government's lack of enthusiasm the year before. Human trafficking legislation was shelved in 2009. The government had to act because this was seen as the first step to legally prevent human trafficking and save thousands of potential victims during the soccer world cup.

The victimhood approach has become a popular humanitarian practise. It forced the South African government to opt for an urgent law and enforcement approach in dealing with human trafficking. Victims of trafficking had to be assisted by law. The South African government had to be assisted by IOM in building capacity because it lacked expertise to deal with human trafficking. As Vigneswaran (2012:12) also noted, "The South African

government had been a co-operative partner as opposed to leading the anti-human trafficking legislation”.

The victimhood approach became empowering for IOM and those who shared a similar agenda with IOM. It forced the South African government to act even though government did not share the same point of view as IOM. In the victimhood approach, everyone assumes that there is an equal moral participation in the fight against traffickers. However, this involves ignoring whose interests are served and for what purposes the approach is adopted.

In public, the IOM had to project loyalty and occupy the high moral ground. It claimed that it was providing assistance to build state capacity to deal with human trafficking. It said it was also assisting the victims of human trafficking through a programme known as the Southern African Counter Trafficking Assistance Programme. In other words, in public, it wanted to project government as successful in the humanitarian mission to save victims of trafficking.

At the same time, IOM did not want to be seen as a government lapdog. It claimed it was only providing assistance and did not interfere with the production of evidence for legislative purposes. It attempted to maintain its technical role in the anti-human trafficking agenda. In other words, IOM and its networks such as Molo Songololo were preoccupied with providing evidence to prove that human trafficking was a crisis in South Africa. They justified their existence by claiming to assist hundreds of victims of trafficking through a U.S. funded programme. In general IOM wanted to be seen as an independent entity and not easily influenced by its reliance on South African government funding.

In terms of public positioning, the IOM's 2003 report avoided blaming the South African government for not taking human trafficking in southern Africa seriously enough. The report did, however, point out that the South African police deported victims of trafficking without asking them about their experiences. Overall, the IOM (2003:1) report suggested that the lack of anti-human trafficking legislation was an obstacle for law enforcement officials. The organisation presented its anti-human trafficking agenda through its institutional knowledge.

For instance IOM (2003:1) concluded its findings by noting:

The absence of specific legislation criminalising trafficking in persons in southern Africa is the main obstacle preventing police and prosecutors from investigating the practise, and charging the perpetrators.

The run up to the 2010 FIFA World Cup became what Kingdon in Sabiter (1991) refers to as the ‘brokerage period’ for a law enforcement approach in dealing with human trafficking. IOM’s language of pushing for legislation shifted to formal international crime control language. However, in an interview for this thesis, conducted with an IOM researcher in Pretoria (2011), the researcher pointed out that despite not being involved in national politics, the organisation was concerned that South Africa was not complying with trafficking protocols. Here, IOM’s language was more neutral and restrained.

However, we know that behind the scenes, IOM was part of the government team that was advocating for anti-human trafficking legislation and as Vigneswaran (2012) pointed out in his report, IOM was the leading organisation providing guidance to anti-human trafficking legislation in the form of consultation. IOM was part of the government Task Team that was working on strategies to deal with human trafficking. Lobbying about human trafficking cannot be separated from the political life of South Africa. This is because it involves government funding, the safety of people in a governed territory, law and policing. During the run-up to the 2010 FIFA World Cup, the South African government embarked on awareness campaigns and also provided police resources to prevent human trafficking. For instance, the NPA together with the IOM, Salvation Army and SAPS launched the ‘Red card human trafficking campaign’ in line with the security measures around the 2010 FIFA World Cup. In other words, it was not society nor victims of trafficking that prompted government to act, but NGOs who claimed to fight for and represent the interest of victims of trafficking.

The government and anti-human trafficking NGOs used victim awareness campaigns. They exploited the popular imagination and emotive language to link prostitution, drugs, missing children, and the influx of people into the country, to human trafficking. For instance, during the launch of the government awareness campaign Minister of Justice and Constitutional Development, Radebe (2010:1) said:

We need to inform our communities that usually it is the case that young girls and women who disappear through the agency of some relatives or people in the neighbourhood often

end up in domestic servitude in some parts of the country or the globe as sex slaves. We need to warn young girls and women that being introduced to drugs is not just a temporary experimentation but a lifelong handicap used as basis to hook victims into sexual servitude and prostitution with further supply of drugs as reason not to leave such heinous environments even when opportunity for escape offers itself.

Hornberger's study of 2012 also identified similar language employed by organisations such as the Salvation Army. This language links prostitution and drugs to the anti-human trafficking agenda. Hornberger & Yaso (2012) argues that it gives such organisations a widely recognised ground to stand upon, and from which to operate. They link their attempts to fight against human trafficking to their long history of fighting against prostitution.

In other words, they choose popular subjects, such as drugs and prostitution and conflate them with human trafficking. Furthermore, Hornberger & Yaso (2012) goes on to say that anti-trafficking organisations spent considerable time and resources on public campaigns to rescue women and children from brothels and pimps. This is particularly true for the Salvation Army which ran the campaigns during the run-up to the 2010 FIFA World Cup. The campaigns also attempted to institutionalise a victimhood mindset by targeting social development and law enforcement officials. The Salvation Army visited police stations and the Department of Social Development requesting that they should refer victims of human trafficking to their shelters.

These were desperate measures to elevate human trafficking to a high moral ground. Even anti-human trafficking public marches organised by organisations sharing a similar agenda failed to attract large crowds or media attention. For instance, in an interview conducted for this thesis with a social worker from the Salvation Army, she indicated that during the World Cup, their volunteers spent each Friday night close to the brothels they believed were using women for sexual exploitation. She further stated that they organised awareness campaigns in the city centre. These included theatre performances about human trafficking. Women were chained as a symbol of trafficking. However, anti-human trafficking awareness campaigns did not attract large crowds and even the march that was organised and funded by government NGOs had a poor turnout.

The reframing of South Africa as a destination, source and transit country for victims of human trafficking became a way of pushing the law makers to consider the bill for urgent attention. For instance, the IOM's media statements on their website would remind readers about the easy movement of traffickers and trafficked victims from one country to another via South Africa.

IOM did this to justify the fact that more victims of trafficking would be discovered and there would be a spike during the 2010 FIFA World Cup. Hence, one of reasons put forward by IOM and other anti-human trafficking groups was that if the anti-human trafficking law was passed in South Africa before the 2010 FIFA World Cup, there would be less trafficking because victims would be protected by law. The IOM (2003) report sparked different responses from different quarters including media. IOM stated clearly its assumptions in conducting the research. The level of media interest was also noted by IOM.

The IOM (2003:18-19) report said:

At the outset, IOM assumed that South Africa was the primary country of destination for victims of trafficking in the region, given its pockets of extreme wealth, its first class financial and transportation infrastructure, and the growing influence of organized crime.

The following extract from the interview for the thesis conducted with the IOM researcher in Pretoria (2011) points to the unwillingness of the South African legislature to entertain the new anti-human trafficking bill.

I think parliament feels that this is not major issue and its lack of public awareness. It's just that cases are not reported under 'human trafficking'.

In addition in 2009, Vigneswaran (2012) points out that the trafficking bill was shelved. However, the section of this thesis on parliament will show that a lack of awareness or doubts about human trafficking were not reasons to stall the process to finalise the legislation. Parliament was not interested in the sensational and dramatic, moralistic approach. Instead, it wanted a proper interrogation of the problem of human trafficking and the different roles that could be played by government departments when it comes to implementation.

However, as Vigneswaran (2012) pointed out, opposition to the dominant view of anti-human trafficking agenda was met with isolation, diversion and silence. A different agenda was not given space, particularly during the build-up to the 2010 FIFA World Cup. Therefore, opposition to the agenda would be carefully done and involve some self-censorship. Hence, even criticism by Gould and Richter of anti-human trafficking bodies was done cautiously, so as not to deny the existence of human trafficking in South Africa.

Another trick which was employed to evoke emotions was to elevate the idea of the ‘silent suffering of victims of trafficking’. For instance, IOM (2012) says in response to questions about the type of evidence produced by the organisation

And the question of evidence..... In 2003 we came up with a publication and in 2008 trafficking in South Africa we came up with another with talks about human trafficking in South Africa and NGO Molo Songololo they came up with their own research and they will be happy to speak about it. And this is research which was done in South Africa, when the cases were not reported as human trafficking and victims of trafficking felt ashamed and they were not willing to come forward. Traffickers are criminals, they are tactical in so many ways and when a victim is trafficked, the victim becomes traumatised and it becomes difficult for victims.

3.3 Parliamentary sovereignty and its response

Analysis of political responses from parliament and the discussions that took place during the run-up to the 2010 FIFA World Cup was critical to understanding what sparked the resistance when parliament refused to debate the anti-trafficking bill. The nature of resistance assists us to better explain the nature of sovereign practices in legislative processes. In the light of manoeuvring by non-state actors, parliament became the focal point for the contestation of the dominant view of the anti-human trafficking agenda. Kingdon in Sabatier (1991) argues that the study of a policy process requires looking beyond a single institution. For Sabatier this allows analysts to draw their understandings from the entire policy community as opposed to a few rigid institutions.

The National Assembly (2012) plays a critical role in terms of political oversight of the cabinet. It helps with law making through public policy processes. The South African

Constitution provides powers that protect and guide legislators on how to execute their constitutional mandate. The oversight role is to monitor and oversee government actions regarding the implementation of law, policies, and the conduct of cabinet ministers and the president.

Chapter 1 of the South African Constitution states it clear that there must be separation of powers between the judiciary, the government and parliament. Their powers and functions must be independent of each other. Therefore, in theory, parliament has its own independence and sovereignty from government. It can act in defiance of government. However, in practice, South African parliament is still dominated by the ruling party with more than 60 % of the parliamentary seats. In other words, the majority of legislators are from, and controlled by, the party in government. In most cases, the legislators follow the party's instruction. Defiance is met with redeployment or a disciplinary process.

It is common knowledge that although the anti-human trafficking bill cannot be compared to a pressing domestic bill such as the Information Bill, the legislature still had to be seen to be taking it seriously. Legislatures particularly from any ruling party cannot be seen as exposing their own government in front of the international community. Scott (1990) defines any unexpected resistance as 'rare political moments' when the dominated resort to resistance in a politically disguised manner. It is therefore uncommon for the ruling party legislators to aggressively disagree with cabinet ministers in parliament particularly during public sessions. As Barkan (2005:20) observes, "the conventional wisdom among students of South African politics is that the parliament is a weak legislature and little more than a rubber stamp because the ruling party that dominates the institution can fire or recall their MPs who are seen as rebellious".

However, when the government tabled the anti-human trafficking bill in parliament on the eve of the 2010 FIFA World Cup an unprecedented move occurred. The legislators refused to debate the bill before the kick-off of the sporting event, citing that more consultation among different departments was required. This is despite the fact that government had hoped that the bill would become law before the soccer tournament started. As MP, Swart (2011) from the ACDP noted: "The Committee was under pressure to pass the bill" (see PMG minutes 2011:11). In his response to the interview for this thesis, the ACDP MP Swart acknowledged that when the bill was tabled in parliament, parliamentarians insisted that the Portfolio

Committee for Justice and Constitutional Development hold hearings into what degree the South African government was prepared to deal with human trafficking.

Public opinion, particularly in the mainstream and faith-based media, was unfavourable to the idea of a delay in deliberations on the bill. The mainstream and faith-based organisations' media spoke of interdepartmental anti-human trafficking campaigns and the promise of policing of human trafficking. For instance, the *Catholic Herald* published a story in May 2010 which spoke about a group of women calling themselves International Network of Women's Religious Orders. They launched anti-human trafficking awareness campaigns claiming that unlike Germany, South Africa will experience human trafficking because of the porous borders, lack of anti-human trafficking legislation and the potential of trafficking of school children because of the school closures.

Although human trafficking has not sparked large public protests from ordinary people in South Africa, media coverage about the subjects during the run-up to the 2010 FIFA World Cup was enough to convince unsuspecting readers that the South African public faced the crisis of human trafficking. For instance, one local newswire called *BizCommunity*⁵(2010:1) published a story with headlines *2010 FIFA World Cup Boosts Africa's Human Trafficking*.

Government was also putting the spotlight on the legislation by tabling the bill during the run-up to the 2010 FIFA World Cup. It argued that it had to do so because it was obliged by the Palermo Protocols and Convention.

The Justice Minister, Radebe was quoted on (*Defence Web*,⁶2010: a) as saying:

"This has got nothing to do with the World Cup ... it's been a work in progress since 2003. Of course 2010 will come with its challenges because of the World Cup and we have a duty to make sure the country is safe," said Radebe. "South Africa is a signatory to the United Nations Protocol to Prevent, Suppress and Punish Trafficking in persons, especially women and children. We are therefore required to pass domestic legislation in order to fulfil our

⁵ *BizCommunity* (2010:1) 2010 FIFA World Cup Boosts Africa's Human Trafficking available from www.bizcommunity.com/article/196/147/43704.html [Accessed: September 2014]

⁶ *The Defence Web*, 2010 a Human Trafficking Bill Tabled Available from http://defenceweb.co.za/index.php?option=com_content&view=article&id=7166:human-trafficking-bill-tabled&catid=52:Human%20Security&Itemid=114 [Accessed 5 May 2014]

international obligations. It follows that we could not have been motivated by the 2010 FIFA World Cup to pass legislation.”

As with all bills, evidence in support of the anti-human trafficking bill had to be interrogated in parliament before it could be passed. When government termed the bill as a ‘priority bill’, it adopted a legalistic approach arguing that it had to table the bill because of international protocols. At the same time, Radebe (2010) listed domestic legal instruments and reasons for delaying process. He said further consultation was required. Government went on to acknowledge that there are no statistics about human trafficking and it was important that people should not speculate.

Lack of reliable data was a problem. Officials had to adopt the popular anti-crime language approach when they embarked on awareness campaigns about human trafficking and the pending bill. The government awareness campaigns, doctored by anti-trafficking organisations, were complementing efforts by the government in drumming support for the anti-trafficking bill. However, the government was faced with both practical and theoretical constraints. On one hand, it had to comply with the anti-human trafficking protocols. On the other hand the domestic legislative process demanded a level of understanding of the extent of the problem of human trafficking in South Africa and who was involved. The country’s reputation as the crime capital of the world with its porous borders also added to the fears of the international community. It was thought that human trafficking, particularly trafficking for sexual purposes, was rife in South Africa. Radebe’s (2010) speech on the day of the tabling the bill concluded by saying that government was committed to fight against crime.

In other words, the government actions were in response to the popular assumption that women and children would be trafficked for sexual purposes during the 2010 FIFA World Cup. So the tabling of the bill by the Justice Department was also part of reducing the safety concerns around the 2010 FIFA World Cup. The Anti-Human Trafficking bill became a spectacle to demonstrate that South Africa was taking positive action and doing ‘something’ against human trafficking.

The National Assembly represented by the Portfolio Committee on Justice and Constitutional Development (2010) released its statement. While it welcomed the bill, the Portfolio Committee also believed that the process to finalise the bill should not be rushed.

The Parliament (2010) statement said;

Anticipation of an increase in trafficking, especially for sexual purposes, ahead of the 2010 FIFA World Cup, has focused attention on South Africa's ability to deal with trafficking. It is unfortunate that South Africa does not yet have a comprehensive legislative framework to address human trafficking but legislation of this type is complicated, requiring that a number of affected government departments give their input. While comprehensive legislation is desirable, the Committee believes that it cannot be rushed.)

Firstly, government's introduction of the bill to parliament started by explaining the reasons why the bill had nothing to do with the 2010 FIFA World Cup (See Radebe 2010). The government explanation did not seek to debunk the myths about trafficking in South Africa, nor might that human trafficking increase around 2010 FIFA World Cup. However its actions did suggest that the government was in a 'panic' or 'crisis phase' and was counteracting rumours and international pressure to deal with the trafficking of women and children. For Richter (2010) this kind of exercise is dangerous because it seeks to divert state resources from well documented human rights abuses such as rape, to less sensational abuses such as labour abuse and gender based violence.

Secondly, government argued that the delay in tabling the bill was because extensive consultations with key stakeholders would be required. It said the delay was not due to the 2010 FIFA World Cup. In retrospect, this is hard to believe because there was little evidence to show that the government had any better understanding of the problem after consultation. Hence, the bill that has been passed, still does not address how different departments will work together. There is little guidance on its implications for existing laws. By late September 2014, the government had also not formulated regulations to address how different government departments would work in implementing the legislation. In addition, government had been working with the bill since 2003. Why had this background 'due diligence' on the practicalities of implementation not been done? Why was the bill tabled just before the 2010 FIFA World Cup and then put on hold? It is hard to believe that this had nothing to do with the sporting event.

Even the emotive language employed by the South African president during the anti-human trafficking awareness campaign in the run-up to 2010 FIFA World Cup showed what kind of strategy was adopted. It was to publicly support the bill.

For instance, President Zuma⁷ in Khumalo (2010:05) said,

Children wandering alone in shopping malls and football stadiums will be vulnerable to people with evil intentions. Dedicated provincial anti-human trafficking police co-ordinators and task teams have been established. There are competent human trafficking investigators in every Organised Crime Unit and regular training workshops are presented to the police, especially to front line officers working at ports of entry.

On the same day, and in the same vein, the Minister of Children, Women and Persons with Disability: Noluthando Mayende Sibiyi in (*Defence Web*, ⁸2010: b) was quoted as saying,

We are gathered here less than 20 days before the FIFA Soccer World Cup to engage on an issue that threatens to be the dark side of what is otherwise a very memorable period and human trafficking may be dark side of the World Cup.

This statement from a women's ministry is characterised by sensationalism. This ministry purports to protect vulnerable whole stoking fears about the arrival of strangers in the country. Cohen & Wang (2009:126) argue that "sensationalism is a form of the simplest type of generalised, systematic hysteria which transforms an ambiguous situation into an absolute potent generalised threat". For Cohen & Wang (2009) this gives rise to all sorts of anxieties and false alarms. As a result, the state role in addressing the problem becomes compromised and without legitimacy.

Wang (2004: 473) argues that a state is sovereign if it has the ability to make and implement laws within its territory and can function without any external power and assistance, and does not acknowledge any higher authority above itself. Vigneswaran (2012) has shown that action of the South African government was determined by the donor funding from US and the role of U.S. State Department Trafficking in Persons Report Tier 2 Watch List. This list

⁷Khumalo. G. 2010. 'Be Extra Vigilant: Zuma urges Parents'. Available from <http://www.sanews.gov.za/south-africa/be-extra-vigilant-zuma-urges-parents>. [Accessed: 05 March 2014]

⁸ *The Defence Web* b 2010 Zuma Warns of Human Trafficking risk. Available at <http://www.defenceweb.co.za/index.php?option=content&view=article&id=8122:zum> [Accessed: 04 April 2013]

monitors government efforts in fighting against human trafficking. Sometime before the 2010 FIFA World Cup, South Africa was downgraded on this list.

The South African government was forced to rely on literature on anti-human trafficking programmes that were produced by organisations (such as IOM and Molo Songololo) and funded by the European Union, the U.S. and the Norwegian Embassy. As this thesis indicated in the literature review, the interests of these countries were the outright ban of prostitution. The national sovereignty of the state was at stake because of the inability of government to assist the local population to differentiate between the truth and rumour. It was dealing with the sovereignty of a legislative process, of a bill that would affect its ordinary citizens. Yet government was complicit in preparing the ground on which public panic took shape.

For Hinsley (1966) to understand sovereignty, we need to contextualise power and competency of political institutions. Hinsley (1966) argues that when conditions of a stateless society exist, authority on socio-political matters relies on psychological and moral coercion rather than force. For him, stateless conditions turn out to be less sovereign because the will of the community does not take precedence. The absence of the voice of the general population in the parliamentary legislative process did not matter. Government relied on anti-prostitution bodies' knowledge and input (which was selective and driven by an external agenda).

As Bond (2011) notes, the hosting of the 2010 FIFA World Cup meant loss of sovereignty and less democratic rights. Bond (2011) examined the FIFA laws which were signed with South African government. For instance, the FIFA laws banned political expression around the stadium and events integral to the sporting culture of the nation. Local traders were banned from selling in FIFA zones. Ham (2011) argues that anti-trafficking laws and policing that are not grounded in evidence can have dire consequences for the victims. Ham (2011) quoted from a study which was conducted in eight countries that followed a similar sensationalist approach to policing and found there were human rights violations of trafficking victims.

Parliament's concerns about content of the bill also exposed government's lack of sovereign leadership as far closing the gaps went. As it was, some MPs who held discussions behind closed doors in parliament had raised concerns about the gaps and their implications.

The ACDP MP (2011) said.

The major challenge will be the abuse of the system and that is why the bill is being delayed. By November last year we were almost finished 95% of the work when Home Affairs came and said there will be huge scope for abuse in the system where people will fabricate that they are human trafficked victims like refugee and illegal immigrants who want benefits.

They said illegal immigrants will use any loopholes to justify their stay here and to obtain benefits and they will use this bill to say we are victims of human trafficking and it would be difficult to disprove that. And that is where we are engaging the Home Affairs to close that loophole.

The NGO issued a certificate to that effect and you are entitled to the benefits as well possible permanent residence and you can see the huge benefits and the danger of abuse to the system if there is fabrication. We were bit upset with Home Affairs that they came in at such a late stage. (ACDP MP: 2011)

The Home Affairs Department is one of the key ministries that could make or break the anti-human trafficking law. For instance, the legislation assumes that foreigners without legal documents such as IDs, Passports or Visas are vulnerable to trafficking. The Home Affairs Department is expected to protect trafficking victims and provide documentation while the victim is kept in the country.

The irony was that parliament's refusal to deliberate the bill and pass it before 2010 FIFA World Cup relied on technocratic arguments. It argued that different departments had to be consulted on their readiness and their inputs. This was despite the fact that government had already set up a multi-Task Team that would specifically work on anti-human trafficking initiatives. In other words, the representative of the people refused to adhere to the popular views that were in support of the bill. These views were also expressed in the mainstream media. As Bonthuys (2012) pointed out, opposition to efforts against human trafficking was met with moral outrage. Opponents were politically and morally dislodged.

To properly understand this opposition by legislators, one has to draw lessons from Scott's characterisation of 'public and hidden transcripts'. Scott (1990) argues the 'relations of domination' are at the same time 'relations of resistance'. According to Scott (1990) for domination to work, actions must generate friction to keep the momentum. The South African government acted with its own hidden transcript which rested on the sense of authority. Government did not expect resistance because parliament has been used by the government elites as an instrument of domination before. Hence, government spoke about the priority of cracking down on human trafficking. It used harsh language to describe traffickers and the punishments that would be given to law breakers. It is common knowledge that government relied on its majority of MPs in parliament to push their agendas through. However, this is not the case for all agendas. The stakes during the build-up to the 2010 FIFA World Cup were high. As Bonthuys (2012) showed, government was expecting economic benefits particularly from the tourism sector, because of the large number of people that were expected to travel to the country.

So the tabling of the bill had both an economic and psychological effect on the legislators. The legislators (which this thesis will refer to as the 'dominated' at this stage) opted to favour their own hidden transcripts. They referred to the consultation process that government should have undertaken before it tabled the bill. For Scott, these are rare moments of political electricity, when often for the first time in memory, the hidden transcripts are spoken directly and publicly in the teeth of power.

CHAPTER 4. CONCLUSION

The signing of the Prevention and Combating of Trafficking in Persons Bill by President Jacob Zuma in 2013 is an important milestone in ensuring that victims of trafficking are protected and assisted while perpetrators are punished. Important lessons as far as the legislative process must be taken into account before government develops regulations for effective implementation.

The parliamentary rebellion against rushing the bill through parliament during the run-up to 2010 FIFA Soccer World Cup exposed government's lack of understanding of the matter. The South African government was forced adopt popular international and local NGO agendas which had more to with the financial and narrow interests of their organisations, than they did with the victims of human trafficking. Parliament's rebellion against the dominant view assisted government to gain time for a proper legal process to ensure a quality anti-human trafficking law.

So Scott's 'art of resistance' gives insights into both the benefits and challenges with regard to legislative autonomy. Government should allow its MPs to be more flexible because it plays an important role in preserving the democratic rights of South African society. This enables the sovereignty of the country to be protected. More in-depth research is needed to understand the post-2010 FIFA World Cup legislative environment, with particular reference to the role of parliament in anti-human trafficking legislation.

The government adoption of 'victimhood strategies' was short sighted. Government should, instead, have grounded its legal and awareness activity in empirical evidence. The research has shown that 'moral panic' can result in shifting the real focus of legal intervention. Government should not allow sporting events to be used as a lever to force government to neglect the voices of its citizens in a legislative process. This is because these rights are entrenched in South Africa's Constitution. And so, a process to effectively develop regulations to support anti-human trafficking legislation should start as soon as possible. Let's give a real voice to trafficking victims and the people of South Africa.

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Appendix

Interview Consent Form

Title: Hidden Transcripts, Moral and Policy Entrepreneurs, and Human Trafficking Legislation in South Africa

Introduction:

You are invited to participate in a study Masibulele Alberton Yaso is carrying out for the completion of a Masters of Arts (MA) at the African Centre for Migration & Society at the University of the Witwatersrand. My supervisor is Doctor Julia Hornberger, who may be contacted by the e-mail at julia.hornberger@access.uzh.ch or by phone at 011 717 4033. The purpose of this study is to look at how international institutions in coalition with local actors have shaped and influenced the acceleration of human trafficking policy. And what has led to parliament delaying this process of passing the human trafficking legislation. This study will attempt to contribute to the literature gap (the influence of different actors on policy process) about the human trafficking discourse in South Africa.

>Your participation in this study is entirely voluntary.

>You can withdraw at any time from this study.

>Your confidentiality will be ensured. You will remain anonymous in the final research report.

>The duration of this interview will be between one and two hours.

>You will be asked some questions to answer to the best of your ability.

> You do not have to answer a question if you feel uncomfortable.

I consent to being interviewed by Masibulele Alberton for this study. I understand that this research is being conducted as requirement for his Masters in Migration Studies from the University of Witwatersrand located in Johannesburg, South Africa. I have read this form and the study has been explained to me. I have been given the opportunity to ask questions, which have been answered to my satisfaction. I have been given an extra copy of this consent form.

Print Full Name-----

Signed-----

Date-----

Participant Information Sheet

Project Title: Hidden Transcripts, Moral and Policy Entrepreneurs, and Human Trafficking Legislation in South Africa

Invitation

You are invited to participate in a study Masibulele Alberton Yaso is carrying out for the completion of a Masters of Arts (MA) in African Centre for Migration & Society at the University of the Witwatersrand. My supervisor is Doctor Julia Hornberger, who may be contacted by the e-mail at julia.hornberger@access.uzh.ch or by phone at 011 717 4033. The purpose of this study is to look at how international institutions in coalition with local actors have shaped and influenced the acceleration of human trafficking policy. And what led to parliament delaying this process of passing the human trafficking legislation. This study will attempt to contribute to the literature gap (the influence of different actors on policy process) about the human trafficking discourse in South Africa.

RIGHTS

- >Your participation in this study is entirely voluntary.
- >You can withdraw at any time from this study.
- >Your confidentiality will be ensured. You will remain anonymous in the final research report.
- >The duration of this interview will be between one and two hours.
- >You will be asked some questions to answer to the best of your ability.
- > You do not have to answer a question if you feel uncomfortable.

I consent to being interviewed by Masibulele Alberton for this study. I understand that this research is being conducted as a requirement for his Masters in Migration Studies from the University of Witwatersrand located in Johannesburg, South Africa. I have read this form and the study has been explained to me. I have been given the opportunity to ask questions, which have been answered to my satisfaction. I have been given an extra copy of this consent form.

Participant's Name

Participant's signature

Date

Name of person obtaining consent

Signature of person obtaining consent

REFERENCE FOR ETHICS CERTIFICATE

List of Interviews

1.Salvation Army

2.IOM

3.SALRC

4.ACDP