

Changing policy: lessons from the passing of the 2013 South African
Trafficking in Persons Act

CHANGING POLICY

LESSONS FROM THE PASSING OF THE 2013 SOUTH AFRICAN TRAFFICKING IN PERSONS ACT

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African Centre for Migration & Society

Background

There is an expectation that researchers produce development knowledge with the aim of influencing policy and that decision makers, in turn, make evidence-informed choices. However, there is almost no literature documenting whether this is the case or how policy gets made in the global South.

This brief draws on research conducted by the African Centre for Migration & Society with policy makers and Non-Governmental Organisations. Using the development of The *Prevention and Combatting of Trafficking in Persons Act* (2013) as a case study, it reflects on how policy gets made and, drawing on these lessons, some of the more effective ways for researchers and activists to influence the policy process.

The aims of the research were to identify:

- The key actors involved in the policy process;
- The factors that influenced the passing of the Act;
- The contestations that took place between different actors; and
- How each of these factors impacted on the process of policy making and the final policy.

The trafficking context in South Africa

The *Prevention and Combatting of Trafficking in Persons Act* was passed in 2013 but only brought into effect on 9 August 2015, to celebrate Women's Day. However Trafficking had been a concern in South Africa for more than a decade. In fact, debates around trafficking in persons (TIP) in South Africa began in 2001 when the United States of America's Department of State released its first annual Trafficking in Persons Report. In this report, South Africa was ranked Tier 2 which meant that although the country did not fully comply with the Trafficking Victims Protection Act (the US anti-trafficking law) it was making efforts to. However in 2005, South Africa was demoted to the Tier 2 Watch List. This created political concern as a further demotion to Tier 3 could have resulted in sanctions and/or a loss of funding, most notably that provided by the President's Emergency Plan For AIDS Relief (PEPFAR).

In addition, under the new democratic dispensation, South Africa has demonstrated a strong commitment to the global human rights agenda. For example, the Constitution which was passed in 1996, is one of the most progressive in the world. Given this commitment to human rights, it is not surprising that South Africa would sign and ratify the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*, or Palermo Protocol, supplementing the *United Nations Convention*.

Debates around trafficking gained momentum in the run up to the 2010 FIFA World Cup hosted in South Africa. The Trafficking Bill was introduced to Parliament amid pressure to pass legislation prior to the sporting event, due to claims that thousands of women would be trafficked into the country for sex work during this time (Bonthuys, 2012). However, this did not happen and the Act was only passed in 2013.

It took 1,942 days from the Bill's introduction to Parliament to its implementation, far beyond the average of 410 days in part because of the contestations that took place over trafficking. The most common of these contestations were:

- 1) There was a debate about the extent of trafficking and the forms it took. Some claimed that there were large numbers of trafficking victims in South Africa and that they were trafficked primarily for sexual exploitation. Research did not back this up (see Gould, Richter, & Palmarty, 2014). However challenges to this position were often seen as being in denial about trafficking.
- 2) In addition there were extensive debates about whether and under what circumstances sex work became trafficking and whether the decriminalization of sex work might increase or decrease trafficking.
- 3) Finally there was a great deal of conflation of smuggling with trafficking and this created a general debate about the risk of cross border migration and whether border control should or could be enforced. The conflation of cross border movement with security risks meant that there was a debate that saw human rights as being in opposition to security

Methodology

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More than 20 in-depth qualitative interviews were conducted with Parliamentarians, civil servants, and other key stakeholders who contributed to Trafficking in Persons Act. The minutes from the meetings of the Parliamentary Committee on Justice and Constitutional Development, where the Bill was deliberated, were also analysed.

Key findings

Policy making was influenced by the intersection of international and local pressure to act against trafficking in South Africa.

International influences

We identified three kinds of international influence in this research. The first was South Africa's International obligations. The Palermo Protocol, which South Africa signed (2000) and ratified (2004) requires signatory countries to develop national anti-trafficking legislation. In addition, pressure from other countries played an important role in passing the Act. The United States was the most significant country to influence the Act because of the Trafficking in Persons Report that ranks states on their responses to Trafficking and placed South Africa on the Tier 2 watchlist in 2005. However there was also general concern expressed by respondents that South Africa maintain its international reputation as a defender of human rights and this concern operated as a form of indirect international pressure. Finally, there was pressure to pass the legislation from international organizations such as the IOM who had begun work in South Africa in 2003 with a trafficking programme already a part of their mandate and who developed extensive advocacy materials aimed at shaping South Africa's policy response.

Local influences

Within South Africa, these global concerns around trafficking were taken up in quite conflictual ways. There were two coalitions which were vocal around the making of the Act, which in our research we call the anti-trafficking coalition and the rights-based coalition. Members of the anti-trafficking coalition were a combination of NGOs, religious organizations, and individuals who took the position that trafficking was a large and important problem in South Africa and that trafficking legislation was urgently required. Much of their advocacy focused on the issue of cross border trafficking for the purposes of sexual exploitation. Most of these groups were also against the decriminalization of sex work often conflating this with trafficking and implementing programmes to remove women from the sex industry. They were sometimes connected to the international NGOs that were advocating on trafficking and their messaging which relied on shock rather than research was consistent with international messages on trafficking.

The rights-based coalition was made up of human rights NGOs and researchers who were not only working on trafficking but on a range of human rights abuses. These groups were much more likely to favour the decriminalization of sex work emphasised the distinction between sex work and trafficking. They did less public advocacy on the issue but, given that many were legal organizations, did make technical inputs into the Trafficking Bill.

The role of research

The relationship between policy makers and research was far more complex than we imagined. We found that policy makers do value having research to help them develop policy. However they do not seek out research due

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to time and resource constraints. Instead the onus was on researchers to take their research to Parliament. As a result, researchers and advocacy groups played the role of broker, mediating the relationship between evidence and policy makers. This resulted in limited and ad hoc use of evidence in decision making. Parliamentarians at times expressed frustration with using research that had been presented to them and then later being embarrassed if it was discredited. Thus Parliamentarians expressed a degree of mistrust for researchers and advocacy organizations who they felt might be presenting research based on their own self-interests instead of objective policy purposes.

Lessons and recommendations for influencing policy

We draw five main conclusions about policy making from this project that can guide researchers and advocates who are trying to influence policy:

Research and evidence is used by policy makers and civil society in ad hoc and limited ways. There is recognition of the importance of evidence and accurate evidence by policy makers. However, they are, by their own admission, passive rather than proactive about evidence and wait for it to be presented to them. **Researchers who want their research to feed into policy will have to personally present it to parliament and show its connection to the policy process.**

Researchers have to gain the trust of policy makers and convince them that their research is good quality, unbiased and honest

Research was not necessarily more effective in influencing policy than popular claims in the media and social media or international influences. As a result **researchers wanting to ensure evidence-influenced policy need to show how their research fits in with or contradicts the political and popular imperatives that shape policy.**

Different organizations make very different contributions to the policy process. In our research, organizations in the anti-trafficking coalition were effective at raising a public outcry over trafficking but less effective in making technical inputs into the policy process than the rights based organizations. **Organizations wanting to influence policy need to create coalitions that have broad skill sets so that they can impact on different stages of policy development.**

Although policy making largely happens at a national level, the concerns and focus that national policy responds to are often global as well national. Policy at a state level does not happen in a vacuum or manner which is unconnected to broader, global ideas and influences. The importance of international reputation for South Africa, which has always prided itself on its progressive human rights policy, should not be overlooked in terms of its influence on the policy making process. **Advocacy and research organizations will need to show how local concerns connect to global influences and offer policy makers options to meet both sets of obligations.**

Conclusion

In our research we found that policy was influenced by a combination of international pressure, local advocacy and research. Research was important to policy makers but it was not privileged over other information nor was it actively sought out. Researchers and advocacy organizations working to influence policy need to take research to policy makers personally, show how it connects to the other influencers of policy and ensure greater trust and

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credibility is built up between policy makers and researchers.

Although the Trafficking in Persons Act is a unique case study, tracing its development shows the very real role that both international and local stakeholders can play in policy making at a national level in South Africa, and highlights the obstacles to evidence based and efficient policy making within the policy process.

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