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# The globalisation of trafficking and its impact on the South African counter-trafficking legislation

INGRID PALMARY

*University of Johannesburg, South Africa*

THEA DE GRUCHY

*University of the Witwatersrand, South Africa*

## Abstract

This article was prompted by emerging and highly politicised debates in South Africa over the role of ‘foreign influence’ in policy-making. Whilst popular debates on this issue are often over simplified, it nevertheless seemed a relevant topic for migration policy-making given its cross-national focus. In this article, we therefore consider what influenced the development of South Africa’s 2013 *Prevention and Combatting of Trafficking in Persons Act* (TiP Act) as just one example of migration policy-making. Using qualitative methods, we map the influences on the South African TiP Act, and highlight how these shaped the passing of the Act, as well as the form that it took. We describe three pathways of international influence that shaped and constrained the possibilities for the Act: the global system for the governance of trafficking, the globalisation of knowledge around trafficking, and the nature of diplomatic relations. Exploring these pathways, we interrogate and unpack the idea that policy-making takes place in isolation and exclusively at a national

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## Corresponding author:

Ingrid Palmary, Department of Sociology, University of Johannesburg, Kingsway campus, PO Box 524, Auckland Park, 2006, South Africa.

Email: [ipalmary@uj.ac.za](mailto:ipalmary@uj.ac.za)

level. Instead, this article illustrates how policy-making around issues of trafficking, and migration, takes place amidst complex and unequal global relationships.

### **Key words**

migration, modern day slavery, policy-making, South Africa, Trafficking in Persons, Trafficking Victims Protection Act

## **Introduction**

In this article, we aim to understand how global influences shaped the development of South Africa's 2013 Prevention and Combatting of Trafficking in Persons Act (TiP Act). In recent years, the issue of international influence in policy-making, and civil society activism for policy change, has become increasingly politicised in South Africa. In public political discourse, politicians have repeatedly questioned the motives of non-governmental organisations (NGOs) and other advocates for policy change who receive funding for advocacy from foreign donors, even going so far as to call them 'agents of regime change'. For example, on 26 April 2016, David Mahlobo, the State Security Minister at the time told journalists that, while NGOs have played their part in South Africa's development, 'there are those who are used as NGOs, but they are not. They are just security agents that are being used for covert operations' (see Merten, 2016). As such, the notion that foreign interference in policy-making is inappropriate, and has sinister motives, has created tension in South African policy-making.

Within this context, South Africa has had an ambivalent approach to the role that supranational bodies and external forces play in influencing, or attempting to influence, national policy. For example, in 2017, South Africa failed to arrest Sudan's President Omar Hassan al-Bashir in accordance with its membership of the International Criminal Court (ICC). This move led to heated debate about whether South Africa's membership of the ICC is incompatible with its role on the African continent, whether foreign countries unduly influence South Africa's decision-making, and how global power relations impact on South African policy and political priorities. In the current populist and divisive political moment in South Africa, the meanings attributed to the global nature of some policy-making have thus often relied on overly simplistic binaries between Africa and the West.

In contrast, within the field of policy research, it is not uncommon to lament the fact that policy analysis has focused overwhelmingly at the national level (Dolowitz and Marsh, 2000). The idea that policy-making takes place only at a national level needs some unpacking, particularly in the case of

migration policy-making, which has taken place amidst complex and unequal global relationships. Whilst the national level of governance might, technically, be where laws and policies change, in reality policy change has as much to do with international (and local, subnational) actors and institutions as it does national ones (see Palmary and de Gruchy, 2016). Rather than imagining that national boundaries constitute a necessary and predefined basis for policy-making, it is useful to recognise the multitude of ways that policy direction is shaped and its global nature, particularly in the case of migration policy (see also Morris, 1997 on the globalisation of institutions). Within migration studies, the work of Betts (2012) most closely attends to the global dynamics of migration policy-making. He notes that there is no coherent multilateral institutional framework for the governance of migration, such as a United Nations (UN) agency. Although this changed in 2016 when the International Organisation (IOM) became a UN agency, one of the consequences of this late development has been that states are relatively autonomous in their management of migration. This is not to suggest that global regulation of migration is absent; rather, different aspects of migration have different levels of global regulation, ranging from refugee migration, which has a dedicated High Commissioner (UNHCR), to labour migration, which is largely unregulated at the global level. Betts (2012) rightly points out that there has nevertheless been a 'bottom-up' framework for global governance of migration (2012: 2) forming what he refers to as 'thin multilateralism' (2012: 12). As a consequence, the governance of migration takes place in diffuse ways. For Betts this requires attention to three components of international relations: the national interests at play in responding to migration, the power dynamics between states, and the ideas that shape the international politics of migration. This article will consider some of these 'bottom-up' practices of migration governance and how they shaped both the discourse on trafficking in South Africa and the development of the TiP Act. Thus, we also look at the different interests, power dynamics and ideas that have shaped the development of this particular attempt at the regulation of migration. In doing so we aim to complicate an otherwise too simplistic and polarised debate.

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

Contemporary critiques of concerns around trafficking are often traced back to the political and moral concern over the 'white slave trade' of women in the early 20th century (Allain, 2013; Zheng, 2010). Authors that trace this history note that concerns around trafficking arose at a time when, due to developments in rail travel, women experienced increasing mobility outside the domestic sphere. As women became more mobile outside the home, fears

were expressed that their chastity may be compromised by their newfound mobility (Zheng, 2010; Allain, 2013; Goodey, 2008). Thus, even the earliest debates on trafficking were driven by an anxiety over what was seen to be the inappropriate mobility of women and the associated problems of morality. It is, therefore, unsurprising that one of the most rehearsed critiques of the anti-trafficking movement, both then and in contemporary debates, has been its 'Victorian paternalism' (Allain, 2013: 340–341). It is largely for this reason that concern over trafficking is often conceptualised as a moral panic (see, for example, Allain, 2013 and Bonthuys, 2012).

More recent concerns around trafficking in persons can be traced to the late 1980s and 1990s, in response to the new found mobility of Eastern Europeans following the fall of the Berlin Wall in 1989 (O'Connell Davidson, 2015). It was in the context of this growing concern with the increasingly porous borders of the post-Cold War period, transnational organised crime, and the (perceived) inability of states to control immigration, that trafficking in persons took the fore as a security concern for nation states (Goodey, 2008: 422; O'Connell Davidson, 2015). Whilst there may well be other factors involved, this literature suggests that the intersection of gendered moral anxieties over the movement of people deemed undesirable once more shaped the renewal of interest in trafficking.

As well argued as these historical critiques are, there is another, less well told, narrative about the gendered political currency of trafficking debates that is rooted in the practices and policies of colonial governance. Most relevant for this article is the way in which concerns over trafficking were played out in the colonies and were connected to the missionary desire to insert European moral values into the colonies. For example, Phillips (2002) points to the enormous emphasis on the regulation of sex in the colonies by colonial authorities – mostly focused on sex work and trafficking which were often conflated. He notes how the National Vigilance Association, which was formed in 1898, operated as a global association preoccupied with a range of 'moral vices' including the suppression of 'houses of ill-fame', obscene art and literature and the employment of children on stage (Coote, 1910, p. 5). The National Vigilance Association, driven by a strong sense of divine purpose, moved to the colonies to launch committees against trafficking, promoting a discourse on sexuality that was rooted in European concerns about moral vice whilst nevertheless being shaped and re-worked by supporters and critics in the colonies (see Coote, 1910).

This moral project was only one part of a broader colonial project preoccupied with the intimate (see Stoler, 1995). For example, Essop-Sheik's (2014) rich work on colonial governance structures in Natal during the 1800s, shows how colonial administrators interpreted practices of polygamy and *lobolo* as forms of slavery of women. She notes how the 1869 Native Marriage Act passed by the Native Administration in Natal was premised on a concern

about older men marrying younger women in Natal and centred on trying to establish female consent for marriage. Essop-Sheik shows how, in the act of codifying oral practices this in fact hardened the lines of male authority rendering women permanent minors. Thus the concern regarding sexuality in the colonial project went beyond a concern with 'slavery' and encompassed all aspects of marriage, prostitution and domestic practice. Other examples are noted by Van Onselen (1982) in his work on the emergence of Johannesburg who shows how the Contagious Diseases Act passed in 1885 was modelled on its British counterpart, driven by a familiar combination of the desire of colonial authorities to offer protection to and moral surveillance of women. He refers to a 'barrage of legislation over a ten-year period' (1982: 112) that was developed as a response to the vices of the newly forming city of Johannesburg and was modelled on British notions of morality (see also Summers 1991). Thus the colonial project was one of reading Africa from the experiences of the Empire and rewriting the meaning of a range of practices in ways that subsumed them under existing British moral scripts rooted in trafficking, prostitution and other transgressions.

This reading of different contexts in ways that reframe and codify practices along lines that are coherent to a Western narrative is one we will focus on in this article. As Mbembé (2001) notes:

Africa still constitutes one of the metaphors through which the West represents the origin of its own norms, develops a self-image, and integrates this image into the set of signifiers asserting what it supposes to be its identity. (2001: 2)

This brief overview provides a sense of how the formulation of policy in post-colonial societies has a complex history rooted in unequal power relations. Given the ongoing inequality between and within states there is value in considering how these global influences might play out today and, given the complex and informal systems for global migration management, to identify the sources of influence and their functioning. As such, we ask how it is that, many years after the end of colonisation, these scripts of moral and sexual regulation continue to be universalised through policy and across different contexts.

## Methods

This article draws on research conducted as part of a study of policy process in South Africa, Bangladesh and Singapore that aimed to understand how policy (particularly unpopular policy) is made. Whilst there is no shortage of literature on policy-making, it has tended to be dominated by research on European and North America (Jenkins-Smith et al., 2014). Through qualita-

tive methods, the South African study attempted to map out the various roles played by key actors and organisations in influencing the TiP Act, both in its formation and in its implementation. We used three methods: analysing the minutes of parliamentary discussions, key informant interviews and stakeholder mapping.

### ***Minutes of parliamentary discussions***

The Parliamentary Monitoring Group (see [www.pmg.org.za](http://www.pmg.org.za)) makes available all minutes of parliamentary discussions online. Every bill deliberated by Parliament, whether it is passed or not, is listed alongside the minutes from any plenary or committee discussion on the bill. The TiP Act was discussed by the Committee for Justice and Correctional Services, made up of proportional representatives of each political party, between March 2010 and February 2013, when the bill was sent to the President to be signed. The minutes were summarised, analysed and used to assess who the actors in the process were and what roles they played; how successful different groups were at lobbying the policy process; and whether competing models for addressing trafficking were proposed, and, if so, by whom.

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

The parliamentary minutes helped us to identify an initial list of individuals and organisations who were involved in the process, and with whom we should conduct key informant interviews. Once we had started contacting and interviewing those from this initial list, snowball sampling was used. Key informants were understood to be anyone who was involved in the deliberations or the advocacy around what became the TiP Act in South Africa between 2000 and 2015. We were able to conduct 22 interviews, including with parliamentarians, civil servants and civil society. Notably, no victims of trafficking participated directly in the parliamentary debates or in the drafting of the policy and, as such, none were interviewed. Where examples of trafficking were raised it was done by NGOs and other organisations who worked on trafficking. This problem of what knowledge was produced about trafficking and by whom has important implications that we elaborate below. For the majority of interviews, the structure was formal and semi-structured interview guides were used. Semi-structured interviews allow for data collection and analysis to happen simultaneously (Hesse-Biber and Leavy, 2011), and we updated points or inquiry and interview guides throughout the research process.

We compared the findings from the minutes of the parliamentary discussions with those of the key informant interviews. Where contradictions were found they were often tested in later interviews. For example, there was some

disagreement between two of the members of the parliamentary committee on the impact that NGOs had had on the policy. As such, we followed this up intensively in subsequent interviews with NGOs and other parliamentary members until we felt able to make a valid judgment with regards to the impact that NGOs had on the process.

### ***Stakeholder mapping***

The data collected were also analysed through stakeholder mapping (Varavassovskey and Brugha, 2000). We were able to create a map of stakeholders who were involved in the process and their links to one another, which allowed us to isolate who the key actors were in the process and what institutional mechanisms they used to mobilise policy-makers. The stakeholder map was constantly updated as the key informant interviews generated new information about stakeholders. Whilst a detailed description of the stakeholder map is beyond the scope of this article, more detail can be found in Palmary et al. (2018).

## **The globalisation of trafficking**

In this section, we consider the different influences that shaped the globalisation of the idea of trafficking and the consequences thereof for the development of South Africa's TiP Act. We were able to identify three pathways of influence, which point to both the global nature of the concern with trafficking in persons and the fact that policy-making at a national level does not happen in isolation from international ideas and influences. The first was through a globalised governance system aimed at preventing trafficking, the second was through diplomatic relations and the third was through the globalisation of ideas on and knowledge about trafficking. Each of these had a number of political consequences that shaped the South African legislation. Together these three strands of influence represent an act of reading abuse from the position of a universal discourse on trafficking in ways that reshaped the meaning and nature of abuses in a wide variety of diverse contexts.

### ***The global governance of trafficking***

The first key global influence on the South African TiP Act was in the creation of what Betts has referred to as a multinational institutional framework for the regulation of trafficking (see Martin and Callaway, 2012 for a detailed description of the institutional arrangements for combatting trafficking). Trafficking became a global phenomenon through the development and adoption of the Protocol to Prevent, Suppress and Punish Trafficking

in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime (Palermo Protocol) in 2000, the same year that the US Trafficking Victims Protection Act was passed. The Palermo Protocol outlines the international response to human trafficking and requires signatories to implement national trafficking legislation. This in itself is a process intended to universalise a definition of what trafficking is and is not. Such institutional arrangements do not simply describe a situation on the ground but rather produce the phenomenon they claim to represent. By agreeing a definition and creating the appropriate responses trafficking is established as a recognisable and global phenomenon.

To date, 117 countries have signed the Palermo Protocol and 40 countries, including South Africa, have ratified it. Ratification puts pressure on these countries to develop counter-trafficking legislation as well as to carry out other counter-trafficking activities. The framing of trafficking in the Protocol necessarily shapes the nature of the definition that countries can adopt and has thus contributed to a process of producing global consensus on the nature and forms of trafficking and its appropriate responses.

It is possible that in the domestication of the protocol that countries adapt the definition in ways that reflect local circumstances. However, the South African Act uses an almost identical definition of trafficking to the Palermo Protocol. The only difference is that it extends the definition to include the illegal adoption of a child and forced marriage. As we will discuss below, this is to be expected given the way that knowledge was also transferred in overly generalised ways across different contexts. There was no local knowledge that could have resulted in a definition that met South African migration or exploitation conditions or could result in alternative responses (Brennan, 2008; Goodey, 2008). As a result, the opportunity to address some of the very real challenges and vulnerabilities created by migration was missed.

At the same time that the Palermo Protocol was being developed, the US Congress passed the Trafficking Victims Protection Act (TVPA) in 2000. This Act requires the Department of State to annually publish a Trafficking in Persons Report (TiP Report) that assesses how countries across the world are responding to the problem of human trafficking. What is significant about this Act is that it requires that all countries be graded in the report in terms of their responses to trafficking, thus globalising the influence of US domestic legislation. The TiP reports essentially function as a 'naming and shaming' mechanism through which the USA can put pressure on states to comply with international norms on trafficking or fail to join what Risse-Kappen et al. (1999) describe as the 'liberal democratic states club'.

Within the reports, a country can be assigned to one of four different tiers, the definitions and conditions of which have not been changed since 2001. Tier 1 means that the country is fully compliant with the minimum standards for eliminating trafficking as set out in the TVPA. The Tier 2 list

is populated with 'countries whose governments do not fully comply with the Trafficking Victims Protection Act's minimum standards but are making significant efforts to bring themselves into compliance with those standards' (US Department of State, 2001). In contrast, the Tier 2 Watch List consists of countries where the number of trafficking victims is believed to be very high or where the country in question is, according to the US Department of State, not responding adequately to trafficking. Countries on the Tier 3 list are those that do not comply with the minimum standards for eliminating trafficking as set out in the TVPA and are not making efforts to do so.

Consequently, another key moment in the development of the TiP Act was South Africa's demotion in 2005 to the Tier 2 Watch List in the US TiP Report. This meant that the USA considered South Africa to be taking inadequate steps to counter trafficking:

The Government of South Africa does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. South Africa has been placed on Tier 2 Watch List due to a lack of evidence of increasing efforts to combat severe forms of trafficking in persons over the last year. To further its anti-trafficking efforts, the government should pass a comprehensive law that prohibits all forms of trafficking in persons, launch a specific anti-trafficking public awareness campaign, and prosecute to conviction an increased number of traffickers (US Department of State, 2005: 198).

Demotion to Tier 3 may have held both economic and political ramifications for South Africa in terms of trade with and aid from the USA. If a country is demoted to Tier 3, the Department of State can recommend to the President that sanctions, which might include the suspension of aid, are put in place to put pressure on the country to respond to trafficking in accordance with the TVPA. Whether or not sanctions are put in place is, however, left to the discretion of the President, who is likely to waive the sanctions if he feels that the restrictions will put the population in question at more risk of trafficking (Interview with US Human Rights Officer in South Africa and State Department researcher, 2015). When questioned, the former Human Rights Officer for the US in South Africa and a researcher working for the US State Department were not convinced that the threat of sanctions had had any tangible effect on the passing of the Act. However, Members of Parliament and most of the civil society organisations interviewed noted that such a threat was part of the impetus for the development of the South African TiP Act.

Asad (2005) has made similar reflections with regard to Article 5 of the Universal Declaration of Human Rights, which states that 'no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'. Reflecting on the historical conditions that resulted in its emergence he notes that it 'serves today as a cross cultural criterion for making moral

and legal judgements about pain and suffering' which, whilst presented as universal, has a history in a very specific time and place (2005: 285). Elsewhere, Palmary (2016) has noted the ways in which this operates as a hierarchy of morality between states where the politics of pity (see Chouliaraki, 2000) shape what sets of abuses are and whether they are deemed worthy of response. Whilst the development of the Palermo protocol put the issue of trafficking on the global agenda, it also necessarily constrained what is (and is not) trafficking and in doing so shaped how South Africa responded to the complex intersections of migration and gendered vulnerability.

### ***Diplomatic relations***

The third source of global influence on the TiP Act was through subtle diplomatic relations. Indeed, our key informants indicated that no matter how severe, the demotion to the Tier 2 Watch List in the TiP report was itself not sufficient for South Africa to pass legislation, or to have signed the Palermo Protocol. As Betts and Orchard (2014) note, there is often a significant gap between the globalisation of ideas and norms and what they refer to as norm institutionalisation, whereby there is a local implementation of a global norm. This was indeed the case in South Africa where the process of developing counter-trafficking legislation took nine years.

South Africa's human rights framework and emphasis on gender equality meant that the state was always likely to support the Palermo Protocol, which it did by both signing (on 14 December 2000) and later ratifying it (in February 2004). Respondents indicated that South Africa has an international image as being a leader on human rights and South Africa's constitution has long been admired globally. As such, some respondents reflected on the desire to protect this image as being at the heart of the development of the Act.

In addition, there were other less obvious sources of US influence on South Africa's counter-trafficking legislation, namely the support it has for HIV prevention in the form of the US President's Emergency Plan for AIDS relief (PEPFAR) funding. This is significant, as South Africa is the largest recipient of PEPFAR funding in the world for its HIV prevention programme (Interview with Political Officer for Human Rights at the US Embassy in Pretoria and Supervisory Foreign Affairs Officer at the Department of State's Office to Monitor and Combat Trafficking in Persons, 2015). The US emphasis on the need to combat trafficking thus had an impact on South African policy-making in an indirect way.

Another source of influence came from the International Organization for Migration (IOM). An IOM office was established in South Africa in the late 1990s, at which time counter-trafficking was at the forefront of their programming, given concerns about the phenomenon in Eastern Europe. Despite there being no South African data, counter-trafficking was established as

one of the first areas of programming for the South African office, around 2003, and has continued to be a central concern of the organisation both at a country level and at a regional level for sub-Saharan Africa. Whilst in interviews with IOM, employees emphasised that the reason for establishing a counter-trafficking programme in South Africa was that they had found evidence of it, as we describe below. The evidence was largely a function of re-scripting a range of existing (and already illegal) social problems as trafficking.

It is also worth highlighting that until mid-2016, the IOM was not officially linked to the UN (<https://www.iom.int/news/summit-refugees-and-migrants-begins-iom-joins-united-nations>). Rather, the organisation relied on member states to pay fees and donate money for programmes. In order to expand, the organisation consequently had to align its programmes with the interests of major donors. One of these donors has been the US Government and, given the sustained interest in the USA on trafficking (as highlighted throughout this article), it is unsurprising that trafficking would therefore be one of the areas on which the IOM has focused. This kind of agenda setting by donors and agencies echoes research done by others, particularly around health, where programmes which fit into preconceived areas of concern for the donor in question are prioritised at the expense of actual local concerns (see also Kapilashrami and Hanefeld, 2014; Kapilashrami and McPake, 2013).

This disjuncture between supranational priorities, coming from either another state or an international organisation like the IOM, and local realities and subsequent prioritisation of the supranational can be seen in these kinds of diplomatic relationships, which influence agenda setting.

### ***The global transfer of ideas***

The second way in which the globalisation of trafficking took place was through its 'discovery' in diverse contexts. During the 1990s, several books and pieces of research were published which exposed what they claimed was trafficking, or modern-day slavery, in a range of countries. One of the earliest examples was the book *The Whistleblower*, which documents a US police officer posted to Bosnia and Herzegovina and her efforts to have the sexual exploitation of women by US army officials and private security personnel acknowledged (Bolkovac and Lynn, 2011). Interviews with the IOM indicates that this was an important book, as it made the organisation aware of what trafficking was and of its existence globally. This coincided with the release of Kevin Bales's *Disposable People: New Slavery in the Global Economy* (2012), in which Bales claimed that there were 27 million people living in slave like conditions in the modern world. This figure continues to be used by those in the South African counter-trafficking movement today, nearly 20 years later, including NGO directors interviewed for this research. There have been many

questions raised about the validity of the Bales research given that the methodology is not given in the report and Bales himself has referred to the number as a 'good guess' (see Weitzer, 2014). Through publications such as these trafficking (re-)emerged, not only as something that was found throughout the world, but as something with a form that was recognisable in very diverse places. By 2015, the TiP Report declared:

Human trafficking has no boundaries and respects no laws. It exists in formal and informal labor markets of both lawful and illicit industries, affecting skilled and unskilled workers from a spectrum of educational backgrounds. Victims include adults and children, foreign nationals and citizens, those who travel far – whether through legal or illegal channels – only to be subjected to exploitation, and those who have been exploited without ever leaving their hometowns. (US Department of State, 2015: 13)

In other words, trafficking is everywhere. Similarly, at the launch of the ninth TiP Report Hillary Clinton claimed that:

The human trafficking phenomenon affects virtually every country, including the United States. In acknowledging America's own struggle with modern-day slavery and slavery-related practices, we offer partnership. We call on every government to join us in working to build consensus and leverage resources to eliminate all forms of human trafficking. (US Department of State, 2009)

In the way these kinds of claims are presented, trafficking is produced as something that is everywhere, affecting all people, in similarly identifiable forms, from every country. This makes a more globalised approach to trafficking policy almost inevitable.

This idea of trafficking as everywhere worked hand in glove with a second discourse, alluded to in the discussion about Bales's research above, which claimed that trafficking was happening on a large scale. For example, in South Africa, in the build up to the 2010 FIFA World Cup, claims about the extent of trafficking for the purposes of sexual exploitation were widely circulated by the media and activists. This is somewhat unsurprising, as panic around trafficking is often linked to major sporting events (Ham, 2011). For example, before the 2006 World Cup in Germany it had been claimed that 40,000 women would be trafficked for the purposes of sexual exploitation during the event. Although South African researchers undertook work that discredited these claims (see Richter et al., 2012), the IOM and its partners nevertheless launched large-scale campaigns to prevent child trafficking in the lead up to the 2010 World Cup. As the numbers and the fear grew, it was claimed that:

40,000 women and children were trafficked during the World Cup in Germany in 2006, and it is estimated that close to 100,000 could be affected next year [in South Africa]. (Africa Check, 2013)

These statistics were heavily critiqued and, given the lack of sources in the TiP reports as well as the lack of local data for the South African World Cup, most likely fabricated – something that fact checking organisation Africa Check has pointed to on more than one occasion (see Africa Check, 2013).

Elsewhere Palmary (2016) has argued that the advocacy on trafficking *produced* trafficking in so far as acts that previously were not named in this way, even as they may have been recognised as reprehensible or criminal, became codified as trafficking. As with the recasting of African marriage as a form of slavery in Colonial Natal, various abuses were re-read through the new lens of trafficking. In particular, both sex work and smuggling were re-read through the lens of trafficking. The focus on sex work was due, in some respects, to the fact that the early concern around white slavery was also focused on women and sex work, and that the first international discussions around and policy on trafficking – the 1933 International Convention for the Suppression of the Traffic in Women of Full Age – linked trafficking with gender and sexual exploitation. As Brennan writes:

[T]he broader category of labor trafficking has been subsumed by the significant component of sex trafficking ... [and] voluntary sexual exchanges between adults for money have been described as sex trafficking. (2008: 49)

The second common conflation was, and continues to be, between trafficking and smuggling. Goodey writes that ‘in legal terms, smuggling becomes trafficking once a person who is being smuggled experiences exploitation at any point from recruitment through to arrival at their destination’ (2008: 422). However, the two terms were often conflated in South Africa. Indeed, policy responses tended to reflect a complete overlap and ‘place illegal immigration, human smuggling and human trafficking together’ (Goodey, 2008: 422–432). In South Africa, there is no doubt that smuggling is pervasive on the land borders. A report by the IOM (De Sas Kropiwnicki, 2010), for example, which set out to research trafficking on the Zimbabwe South Africa border, noted many instances of extreme exploitation associated with smuggling. However, most fell short of the legal definition of trafficking because trafficking has a three-part burden of proof – recruitment, movement, and control. A migrant who knowingly pays a smuggler to take them across the border, but who is then sexually assaulted by the smuggler before making their way further into South Africa, is legally not a victim of trafficking.

Whilst much feminist literature has noted that there is a continuum of abuse and we acknowledge that smuggling or sex work might well become

trafficking, much of the research mentioned above was in service of creating a legal framework designed to create and solidify the boundaries of what is and is not trafficking (see Kempadoo, 2012). In spite of this, the messaging that formed part of the advocacy for the TiP Act was often not about trafficking at all but about sex work or smuggling or even migration in general.

Thus, a number of very dubious pieces of research and anecdotal evidence contributed to the spread of ideas on trafficking and, in spite of the evidence, these claims morphed from mythology to knowledge as well as from region to region (see Palmary, 2016). It is worth noting that South Africa is not unique here. Several researchers (see for example, Allain, 2013: 359) note that 'the dominant anti-trafficking discourse is not evidence-based but grounded in the construction of particular mythology of trafficking'. Beyond the controversy over whether there was any truth to these statistics, what is less well noted is the racialised form that the ideas on trafficking took. In South Africa ideas about trafficking drew on notions of exotic, barbaric African practices that exploit women and children and are replete with references to superstition and ignorance in ways that reproduce racist stereotypes (Gould et al., 2010). One of the most influential pieces of research undertaken by the South African Human Sciences Research Council and commissioned by the National Prosecuting Authority claimed, for example, that:

Respondents believe that victims are either recruited by cult members or purchased by criminal syndicates that specialise in human trafficking: these are said to be mostly Nigerian. Alternatively, satanic cults will kidnap victims often from rural areas. Other targets are street children and prostitutes ... If the ritualistic killing requires a man, gay men in bars are targeted and sedated to overcome physical resistance. (HSRC, 2010: 16)

No sources are provided for these kinds of claims. But over time trafficking has become synonymous with racialised exotic and perverse forms of violence. In this way, startling stereotypes and invented claims began to circulate about trafficking in South Africa, predominantly framed in ways intended to shock and create public outrage. These were often framed within a racialised narrative that took crass stereotyping of African beliefs and recast them as frequent and everyday occurrences. And where some effort was given to add attention to local conditions it was primarily through race-based stereotyping. By way of further example, one IOM advocacy pamphlet noted that:

Faith in the power of voodoo – sometimes called juju – is deeply ingrained in West African culture. It is a direct link to ancient ancestor-based beliefs that include a wide variety of spirits and other supernatural entities, and it forms the base for rituals brought to the Caribbean's and elsewhere. (Eye on Human Trafficking, 2005: 6)

In spite of the above-mentioned efforts to point out the lack of evidence for these claims, they have persisted. In part this is because of the claim that trafficking is so hidden that there must be extensive trafficking that is not evident, even to police. Frequently the argument was made that, because trafficking was hidden, it was impossible to research, in spite of claims that it was everywhere. Furthermore, under the guise of confidentiality, the 2005 TiP report lists a number of case studies of trafficking victims with the following disclaimer (prompted no doubt by the complaints about the lack of sources for their data, see US Government Accountability Office, 2006):

The victims' testimonies included in the report are meant to be representative only and do not include all forms of trafficking that occur. Any of these stories could unfortunately take place almost anywhere in the world. They are provided to illustrate the many forms of trafficking and the wide variety of places in which they take place. No country is immune. All names of victims that appear in this report are fictional. The photographs on this Report's cover and most uncaptioned photographs in the Report are not images of confirmed trafficking victims, but are provided to show the myriad forms of exploitation that help define trafficking and the variety of cultures in which trafficking victims can be found. (US Department of State, 2005: 4)

The secretive and hidden nature of trafficking meant that an overly universalised mythology could circulate without being challenged and that any challenges could be written off as being denialist or insensitive to the victims of these horrors (see Boe, 2009 for one such example).

## Conclusions

Our research shows that there were at least three sources of global influence that influenced and shaped the discourses around trafficking in South Africa and the development and content of the TiP Act: international policy processes; ideas and 'evidence' about trafficking; and diplomatic relations. Returning Betts's call to attend to the ideas, power dynamics and national interests in migration policy-making we can note that the ideas that circulated in the South African discourse had three prongs. First, trafficking was framed as universal and identifiable using globally common criteria. Second, it was framed as extensive, primarily through a process of recoding a complex range of abuses as trafficking even when they wouldn't have met the legal requirements for trafficking. Finally, the racialised forms that the ideas on trafficking took were used to show the exotic and horrific nature of trafficking, thus mobilising responses and closing down debates about whether trafficking legislation was needed and what forms it should take. Extending the argument put forward by Doezema (2001)

it can be argued that the 'third world' trafficking victim has operated symbolically in ways that reproduce the missionary logic of rescue led by the West. The forms that the debate has taken, far from improving the safety of migrants, instead draw on a race-based logic that reproduces the colonial imagination rooted in globalising moral values.

These ideas have spread through a complex set of institutional practices including the signing of the Palermo Protocol, the establishment of the IOM counter-trafficking programme and the US TiP report, which creates a global system of legal obligation. Beyond this, broader and more subtle forms of global influence, such as the threat of sanctions or withdrawal of aid propped up these global practices.

Whilst no doubt cases of trafficking should be responded to and trafficking victims assisted, the approach taken eclipses the needs of vulnerable migrants. Rather, a global policy environment is emerging, largely in the 'bottom-up' way described by Betts whereby powerful nations have shaped the discourse and responses (sometimes overtly and sometimes more subtly) that can be made regarding trafficking at the expense of local needs. The notion that there is a universal moral order that can be read across contexts reproduces the colonial acts of prescribing the appropriate responses to abuse. Just as was no doubt the case in the colonial reading of African marriage there are no doubt abuses that do take place. However, to imagine that there can only be one meaningful response or way of reading this abuse reproduces the offensive notion of the West leading the global human rights campaign and of Africa as a place outside human rights and justice. More complex engagement with how migration policy shapes what kinds of abuses are responded to and how can support the development of more meaningful policy interventions.

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## Author biographies

**Ingrid Palmary** has a PhD in Psychology from Manchester Metropolitan University. She was formerly the director of the African Centre for Migration & Society at the University of the Witwatersrand in Johannesburg. Her most recent book is *Gender, Sexuality and Migration in South Africa: Governing Morality* (Palgrave, 2016). She is also the co-editor of *Healing and Change in the City of Gold: Case Studies of Coping and Support in Johannesburg* (Springer, 2015). She is currently a Professor in the Sociology Department at the University of Johannesburg where she teaches and researches conflict resolution, research methods and gender and sexuality.

**Thea de Gruchy** is a doctoral researcher at the African Centre for Migration & Society (ACMS), University of the Witwatersrand. Her PhD and current research centres on questions of policy process and asks how policy is made and influenced in South Africa. Her current work uses the development and implementation of policy and programmatic interventions, by both state and non-state actors, in the agricultural sector in Limpopo, South Africa to elaborate on and develop this framework. Her recent article is, with J. Vearey, M. Kamndaya, H.L. Walls, C.M. Chetty-Makkan and J. Hanefeld (2016) 'Exploring the Migration Profiles of Primary Healthcare Users in South Africa', *Journal of Immigrant and Minority Health*, <https://doi.org/10.1007/s10903-016-0535-7>.