

Trafficking of Children
The Case of South Africa

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Declaration

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Abstract

The trafficking of children, with the purpose of sexual exploitation, has attained significant attention in the international realm. At present, children's human rights are protected by a number of international treaties adopted by the United Nations, which are also ratified by many states. These treaties have a norm setting function which influences domestic laws in the countries that have ratified them. The „1989 Convention on the Rights of the Child“, the „Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime“ together with the „2002 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography“ are important treaties with norm setting functions. These treaties influence international attitudes and policy measures concerning child trafficking. South Africa, the focus of this study, is in the process of creating a comprehensive legislative framework with the aim to protect children and combat child trafficking. Thus, this thesis examines how international treaties have impacted on South Africa's domestic legislation with regards to child trafficking.

The influence of international treaties and norms on domestic policy and norms regarding child trafficking is illuminated in this study. This analysis builds on a model put forward by Sikkink and Finnemore (1998) of how norms are created by norm entrepreneurs. The assumption is that norms develop in phases through different platforms of organizations and states and these norms eventually become the status quo. This study provides an overview of international and domestic law pertaining to child trafficking as well as a theoretical discussion on the evolution of these norms. A theoretical framework of constructivism and to a lesser extent institutionalism is applied as an analytical tool in order to critically analyse the influence of international treaties on domestic policies in South Africa.

Key words: *trafficking of children, international law, norms, constructivism, policy, South Africa.*

Opsomming

Handel in kinders, met die doel van seksuele uitbuiting, het aansienlike aandag gekry in die internasionale arena. Op die oomblik word die menseregte van kinders beskerm deur 'n aantal internasionale ooreenkomste wat deur die Verenigde Nasies gesluit is, wat ook deur baie state bekragtig is. Hierdie verdrae het 'n standaard normstellingsfunksie wat binnelandse wette beïnvloed in die lande wat hierdie verdrae bekragtig. Die "1989 Konvensie van die Regte van die Kind", Die Protokol ter Voorkoming, Onderdrukking en Straf van Mensehandel, veral Vroue en Kinders, ter aanvulling van die Verenigde Nasies se Konvensie teen Transnasionale Georganiseerde Misdaad saam met die 2002 Opsionele Protokol tot die Konvensie van die Regte van die Kind op die Verkoop van Kinders, Kinderprostitusie en Kinderpornografie is belangrike verdrae met standaard normstellingsfunksies.

Hierdie internasionale verdrae beïnvloed houdings en beleidsmaatreëls oor kinderhandel. Suid Suid-Afrika die fokus van hierdie studie, is in die proses om van 'n omvattende wetgewende raamwerk te ontwikkel wat daarop gemik is om kinders te beskerm en kinderhandel te bestry. Hierdie verhandeling ondersoek die impak van internasionale verdrae op die Suid-Afrika se plaaslike wetgewing met betrekking tot kinderhandel. Die invloed van internasionale verdrae en normes op binnelandse beleid en normes ten opsigte van kinderhandel word in hierdie studie ondersoek. Hierdie ontleding is gebaseer op 'n model van Sikkink en Finnemore (1998) oor hoe norme deur norm-entrepreneurs geskep word. Die aanname is dat normes in fases ontwikkel deur middel van verskillende platforms van organisasies en state en dat hierdie norme uiteindelik die *status quo* word. Hierdie studie gee 'n oorsig van internasionale en plaaslike wetgewing met betrekking tot kinderhandel, sowel as 'n teoretiese ontleding van die evolusie van hierdie standarde. 'n Teoretiese raamwerk van konstruktivisme en tot 'n mindere mate institutionalisme word toegepas as 'n analitiese instrument om die invloed van internasionale verdrae op die binnelandse beleid van Suid-Afrika krities te analiseer.

Sleutel terme: *kinderhandel, internasionale reg, norme, konstruktivisme, beleid, Suid-Afrika.*

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Acronyms and Abbreviations

ANC	African National Congress
CRC	Convention on the Rights of the Child
DoJCD	Department of Justice and Constitutional Development
ECPAT	End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes
EU	European Union
GCIM	Global Commission on International Migration
HRW	Human Rights Watch
HSRC	Human Sciences Research Council
ICC	International Criminal Court
ICN	International Criminal Networks
IO	International Organisation
IOM	International Organization for Migration
IR	International Relations
NGO	Non Government Organisation
OPSC	Optional Protocol to the Convention to the Rights of the Child
SALRC	South African Law Reform Commission
SIDA	Swedish International Development Cooperation Agency
TIP	Trafficking in Persons
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations International Children's Emergency Fund
UNODC	United Nations Office on Drugs and Crime
US	United States

Chapter 1 – Introduction

1.1. The Background and Theme

Children exposed to organized international crime are increasingly on the agenda in the international community. In order to create a safer environment for children the Convention on the Rights of the Child (CRC) was adopted in November 1989 and was entered into force on 2 September 1990. According to the 2005 United States (US) Department of State report „Trafficking in Persons“ (TIP), international¹ trafficking in humans was estimated to be 600, 000 – 800, 000 annually (US TIP, 2005: 6). According to the same estimation, 50% of trafficked persons were children and 80% were women/girls. A report published in 2002 by the International Labour Organization (ILO) estimated the number of trafficked children globally to 1, 2 million annually (ILO, 2002:32). However, according to a report published in 2006 by the United Nations International Children's Emergency Fund (UNICEF), it is extremely difficult to collect data on the subject matter because trafficking of children typically occurs „underground“ and is invisible to the public and to the legal arm (Moccia ed. 2006: 50).

The evolution of international norms, together with international law is influential factors of domestic policy in the contemporary world (Finnemore & Sikkink, 1998). International norms are embodied in international treaties, often with the aim to change or introduce new legislation in states. After the Second World War, a range of treaties came into force with the 1948 Universal Declaration of Human Rights in the frontline. The CRC is an extension of previous United Nations (UN) treaties on children's rights that have stated the necessity of having declarations and articles regarding children. The previous declarations outlined in the CRC are the following; the 1924 Geneva Declaration of the Rights of the Child, the 1948 Universal Declaration of Human Rights, the 1959 Declaration of the Rights of the Child, the 1966 International Covenant on Economic, Social and Cultural Rights (article 23 and 24), as well as the 1966 International Covenant on Economic, Social and Cultural Rights (article 10). The aforementioned treaties together with the CRC are specifically addressing rights of children. The CRC was adopted in order to further highlight that children's rights need special protection and consideration established by an international treaty and the UN as a non-government authority. The underlying assumptions of the CRC can be found in the preamble of the convention and refers to several of the aforementioned treaties. It asserts that

¹ This refers to trafficking across country borders. Trafficking does, however, also occur within countries.

„childhood is entitled to special care and assistance“, „... recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding“ (CRC 1989). Furthermore the preamble in the CRC (1989) proclaims that children „should be fully prepared to live an individual life in society, and raised in the „spirit of the ideals proclaimed in the Charter of the United Nations“, „and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity“ (CRC, 1989). The CRC considers diverse traditions and cultural values and stresses the importance of international cooperation in order to safeguard children“s human rights (CRC, 1989).

There are two Optional Protocols to the CRC. The first is „The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography“ (henceforth referred to as the OPSC). The second is „The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict“.² Both the Optional Protocols were adopted in May 2000. They were subsequently entered into force in 2002. This study will only focus on the OPSC, as the OPSC is the only treaty that specifically deals with sexual exploitation of children. The aforementioned UN legal instruments have included crimes against children in their articles but the OPSC is a far more comprehensive treaty concerning sex crimes against children. This is also the case for the Optional Protocol to the CRC of the Involvement of Children in Armed Conflict.

The OPSC recognises gender priorities in the sale of children. The treaty has identified trends in the child prostitution industry, where child pornography involving young girls is proportionally higher than pornography involving young boys. Young girls therefore face greater risks of being victims of sexual exploitation than their male counterparts (OPSC, 2000). Nevertheless, it is important to concede that boys too face risks of exploitation, mainly concerning labour and conflict related activities.

Trafficking of children, especially sex trafficking of children is a complex and highly sensitive subject matter. The research conducted on the latter is often subject to patterns of generalisation as researchers often face time and resource constraints. According to a variety of prominent scholars, the knowledge base is thus often opaque and ambiguous as the field lacks analytical rigour (Delport, Koen & Mackay, 2007: 9; Kelly, 2005: 236-237; Kelly, 2002

² When mentioned in the text, the latter will be written out in its full length to avoid confusion for the reader.

in Kelly 2005:236; Gould, Richter & Palmery, 2010). It is important to note that each case is unique.

With this in mind, one should endeavour to strive for a unique and holistic approach to complex and sensitive subject matters. This requires comprehensive methodological analysis and empirical research, which then broadens knowledge on the subject matter. In this study I incorporate a constructivist framework, focusing on norm evolution in relation to the subject matter. Empirical research will not be included but theorized. This thesis will not present new data on the subject matter, rather contribute to a comprehensive discussion on policy development regarding trafficking of children. This study focuses on trafficking of children and endeavours to outline how South Africa has dealt with this issue. The research will draw on International Law of children's rights and the OPSC, which was briefly introduced above. In this study, I focus on the relationship between International Organisations (IOs), Non-Governmental Organisations (NGOs) and domestic policy shaping. It is my contention that these matters are related but that their relationships demonstrate ambiguity. The latter is referring to the discussion in international relations (IR) on how and why the aforementioned operate and impact on one another.

1.2. Aim and Rationale

The research in this study focuses on norm evolution concerning trafficking of children within and to South Africa. Trafficking of children was chosen as the concept touches on the three aspects in the OPSC; (i) the sale of children, (ii) child prostitution and (iii) child pornography. These three factors are essential for understanding why children are trafficked. Sale of children and trafficking are thus similar concepts and the literature on this topic does not always distinguish between the two. The sale of children may include trafficking and vice versa. Trafficking of children and the sale of children will be conceptualized in the section on „Conceptualisation of Key Terms“. The literature does, however, show the linkages between the three factors of the OPSC (Wahlberg and Jagefjord, 2010: 16-17).

The aim of the research is to shed light on how South Africa is dealing with trafficking of children in the light of the OPSC. The representation of accountability of crimes against children will be illuminated as International Organizations (IOs) and institutions play a central role in how crimes against children are dealt with. South Africa ratified the OPSC on June 30 2003.

International Organizations (IOs) and Non-Governmental Organizations (NGO's) with expertise on issues concerning children's rights play an important role in how crimes against children are dealt with. The significance of these organizations lies in their work with trafficked children and their research on the subject matter. Furthermore, IOs and NGOs are important actors in terms of implementation of global norms that are initiated and shaped by IOs. Examples of these are: the „United Nations International Children's Emergency Fund“ (UNICEF), the „End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes“ (ECPAT), „Save the Children“ as well as international institutions such as the „International Criminal Court“ (ICC). Small non-governmental organizations also play an important role in maintaining and/or introducing regulations and norms concerning children's rights/crimes against children. One example is the NGO, Molo Songololo, is an important actor working for children's rights in South Africa.

The topic of research in this study revolves around norms in relation to how trafficking of children is being dealt with in South Africa. The case of South Africa will be used to provide a constructive perspective on how ratified international treaties are adhered to. In order to comprehend the complexity of crimes against children and due to time and resource constraints, trafficking of children will be the focus of this study.

The case of South Africa is of high interest in the field of policy studies. During the transition to democracy the new regime introduced cutting edge policies where human rights were central and equality for all was fundamental in the policy making process. The blueprint of the 1955 Freedom Charter that was authored by the African National Congress (ANC) became significant for composing the democratic constitution during the transition to democracy. South Africa was seen as a successful example on the African continent that managed to introduce democracy and policies that would consider the society holistically. The constitution of 1996 is comprehensive and policies were shaped to protect vulnerable groups in the society.

Regarding sex work by adults, South Africa took on an abolitionist³ stance on prostitution in the 2007 Criminal Law (sexual offences) Amendment Bill when the country criminalised the

³ This refers to two opposing sides in the debate on how prostitution should be treated in domestic and international policy. The abolitionist stance is for the criminalising of purchase of sexual services while the liberal (feminist) stance argues for legalisation of the sex industry. According to the latter it is an individual choice to be part of the sex industry, and that the industry should be regulated, while the abolitionists view individuals in prostitution as victims under circumstances that need help (*see* Miriam 2005).

purchase of sexual services (Republic of South Africa, 2007). In accordance with the UN treaties, South Africa has policies in place concerning trafficking of both women and children. Although South African law protects children's rights, the country lacks a comprehensive legislative framework concerning trafficking in persons.

The literature on the case study of South Africa shows that trafficking of children for the sex industry is a major problem. According to a report by Molo Songololo from 2000, children are in high demand in the South African sex industry. There are multiple reasons underlying this, which mainly include factors such as beliefs that children are not carriers of HIV and differing views on when girls become adults (Koen, van Vuuren & Anthony, 2000: 8). According to a report for the South African Law Reform Commission (2007), the aforementioned report by Molo Songololo together with a report by the International Organization for Migration (IOM) constituted the main body of knowledge concerning trafficking of children in the case of South Africa (Gould & Fick, 2007: 3). The purpose of the two reports was to put trafficking in human beings on the policy agenda, which subsequently proved to have a successful result. However, the reports also contained estimations on the numbers of trafficked humans and were not accurate in this aspect. The lack of accuracy stems from the fact that South Africa previously lacked extensive research on the topic. Moreover data collection is difficult due to the contentious subject matter (Koen, van Vuuren & Anthony, 2000: 26). The case of South Africa is highly relevant for this study due to the aforementioned factors.

The accountability aspect of international crimes, or crimes of interest for the international community, is often complicated to establish due to conflicting norms and international and domestic jurisdiction. Crimes against children are not always clearly defined. For instance, who is considered a child may vary in different countries. Despite international established laws, a domestic law may differ in regions within the territory of a state due to cultural and traditional factors. According to Van Bueren „[S]tates hold such fundamentally conflicting views as to when childhood begins that they cannot be reconciled simply by the device of a treaty“ (1998: 33). However, the significance of putting a treaty together is to unify the core in human rights and that this should be the norm globally. A complicating factor that is related to the debate on who is a child consists of the fact that some children may be victims of crimes such as abduction and forced child soldiering. At the same time they might be involved in committing crimes, children that are involved in violent conflict may participate in robbing, looting, rape and murder.

The aforementioned examples show that it is significant to take the specific context of each crime into account in order to deal with it appropriately and guarantee accountability in the legal process. David Crane, the first prosecutor in the Special Court of Sierra Leone, has acknowledged this complexity. According to Crane, children under fifteen cannot commit crimes against humanity since they are victims of trauma and are unable to distinguish between right and wrong (Aptel, 2010: 25). Furthermore, children are in this case victims of a hierarchical norm where adults are in charge and children bound to obey. In a normal functioning society this means growing up, education and socialisation but in a society characterised by warfare this sense of normality may be absent. Additionally, it is according to the aforementioned example that the orders given by adults force children to commit crimes.

In order to examine the ambiguous relationship between norms, policy-making and sex crimes against children, a methodological approach consisting of a combination of theories as analytical tool will serve to illuminate the correlation between the IO/NGO, legislation and norm evolution.

1.3. Research Problem

South Africa ratified the CRC in 1995 and the OPSC in 2003. With regards to domestic law, the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 is in force. Despite this sexual exploitation of children is highly prevalent in contemporary South Africa. Academic research pertaining to the OPSC has been limited. Thus, with this as a background, it is important to shed light on how international treaties have a norm-shaping effect on domestic policy. There is a gap in the literature in terms of theories applied to policies regarding child sex trafficking and the international – domestic relation of norms and domestic policy.

1.4. Research Question and Sub-Research Question

What is the role of non-governmental institutions and International Organizations with regard to international and domestic norms and policies concerning trafficking of children with the purpose of sexual exploitation in South Africa?

Sub-research question: *Which actors are responsible for the trafficking of children for sexual exploitation?*

1.5. Research Design and Method

This study will take on an inductive approach by moving in a non-linear path and making use of grounded theory. By moving in a non-linear path, the research is a holistic process that is open for new information that can appear along the research process. This way to approach the subject matter is predominantly used in qualitative research and is „oriented toward constructing a meaning“ (Neuman, 2006: 152). Furthermore - to move in a nonlinear path means that the research is „cyclical“ in contrast to the „linear path“ that is more common when utilizing a quantitative method, which is characterized by a „fixed sequence of steps“ - „it is like a staircase leading in one clear way of looking at issues“ (Neuman, 2006: 152). Flick (1998: 43 in Neuman, 2006: 152) describes the nonlinear research path in the following words: „Circularity is one of the strengths of the approach, because it forces the researcher to permanently reflect on the whole research process and on particular steps in light of the other steps“. This method is a popular method in the social sciences because it leaves the research flexible during the data gathering process (Neuman, 2006: 157). In the data collection process new information may make it necessary to make changes to the planned research (Burnham et al., 2004: 45). Due to time and resource constraints, the research will rely on a wide range of secondary data. It will consist of; academic articles, government reports, UN reports and special reports, UN treaties and research and reports conducted by non-governmental organizations that will be analysed as part of the research for this thesis.

Glaser, one of the founders of grounded theory, describes the purpose for this methodological approach as: „to generate a conceptual theory that accounts for a pattern of behaviour which is relevant and problematic for those involved. The goal is not a voluminous description, nor clever verification“ (Glaser, 1978 in Mella, 2007: 12). The application process of grounded theory is by Charmaz described as „systematic yet flexible guidelines for collecting and analysing qualitative data to construct theories „grounded“ in the data themselves“ (Charmaz, 2006 in Mella, 2007: 12). The intention is to apply a theoretical framework of constructivism to policy regarding children’s rights and to shed light on an area of children’s rights law that is previously under researched⁴. The author believes that such a method will illuminate the process from „child“ to „demand driven trafficking“. The intention is to illuminate the

⁴ The OPSC is under researched and a study purely on the OPSC would require a larger undertaking with more economic resources than this study has in order to be able to conduct interviews with personnel. However, this study referring to the OPSC, recognise that this is not sufficient for a, for instance, evaluation of the OPSC’s impact in the case of South Africa.

relationship of international norms and domestic policies regarding child trafficking in the case of South Africa.

It is significant to consider two important variables for a holistic study, who are the agents at the norm-creating institutions, what is their background and interests? This will be briefly outlined in chapter three, in the section on IOs. Moreover, it is an important methodological aspect for the analysis of the findings of the case study that will be discussed in chapter five.

A method of a single case study will be used. This study will take on a single case study design. This design has been broadly criticised for not comprehending necessary aspects of comparative case studies, hence, risking narrowing down the possible outcome of the research (George and Bennet, 2005: 32). A comparative case study or multiple case study design for this research is likely to additionally greatly contribute to policy analysis, the influence of IOs and international organised crime. However, the purpose of this study is to illuminate the norm evolution and the impacts of international norms applied on the case of child trafficking in South Africa taking IOs, norms and domestic policy into consideration. Therefore a different research design than a single case study would not be in line with the goal of this particular study.

Generalizations in the study of international politics, international law as well as other subjects are sometimes necessary and useful to correctly interpret events or phenomena. However, it is important to have a context specific approach to this subject matter and even though general international policies on child trafficking are necessary, it is important to not let the crime of child trafficking pass as a number in a statistical study. Hence, both qualitative and quantitative data are useful, however, this study will make use of qualitative data. A study that was to make use of a combination of qualitative and quantitative data is certainly relevant (*see* for instance, Loubser, 2009) but would have a different aim than this study. The approach used should rather be interpreted as a theoretical and methodological approach to the subject matter.

1.6. Analysis

A large part of the study will be descriptive but the discussion of the findings of the study will critically analyse norms and policies regarding child trafficking.

The case of South Africa will be analysed with regard to the influence of IOs, the evolution of norms and how they shape legislation. The data collected and reviewed in the theory

section, together with the data presented in the section on the country case study will be the subject of analysis and conclusion for this thesis.

1.7. Conceptualisation of Key Terms

Trafficking touches upon all the aspects of the OPSC, furthermore, trafficking and „the sale of children“ is often used interchangeably in the literature on the subject matter. However, trafficking of children and the sale of children are not identical acts although one usually means the other. Since the concept of trafficking of children often does include the sale of children and/or child pornography and/or child prostitution, focusing on trafficking of children will provide a wider perspective for the intended study. Furthermore, literature that focuses purely on the OPSC is limited, whilst literature on child trafficking is more widely available and has been researched to a significantly larger extent. By focusing on child trafficking and using international treaties, this study will illuminate the complexity of international law in relation to domestic law in the case of South Africa - with regard to children’s rights and provide a platform for further studies on the topic.

A **child:** will be conceptualised in accordance with international law, a human being below the age of 18 (Apuuli, 2004: 403). Furthermore, in accordance with Article 1 in the CRC: „For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier“ (Convention on the Rights of the Child, 1989).

Child prostitution is in accordance with the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography Article 2 (b) „Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration“ (OPSC, 2000).

Child sex trafficking: Trafficking of children (see conceptualisation „trafficking of children“) for the purpose of the child to, in some way, partake in the sex industry.

Institution: The conceptualisation of institution in this study refers to what Hall and Taylor defines as: “the formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy” (Hall and Taylor, 1996: 6).

International Community refers to the conceptualisation by Black and Williams (2008:4): „the framework of rules, norms and institutions produced by the proceeding activities of those who act in the name of states i.e. political leaders, diplomats and other state officials.“

Policy: Policy has several definitions, however, in this study the meaning of the concept of policy is according to the definition outlined by Spicker (2006: 15): „decision about a course of action, but is also supposed to represent a set of decisions, interrelated and consistent with others.“

Sale of children is referring to the OPSC Article 2 (a): „Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration“ (OPSC, 2000).

Sex Trafficking is an act of trafficking (see conceptualisation on trafficking) with the intention of transferring the trafficked person to partake in the sex industry. It includes the variation in the degree of awareness of what the final destination entails.

Trafficking of humans is referring to the „UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime Trafficking in persons“ adopted in 2000; „shall mean 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 of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs“.

Trafficking of children is conceptualised in accordance with the UN Protocol to „(Prevent, Suppress and Punish) Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime Trafficking in persons“ adopted in 2000 (*see* conceptualization on „Trafficking in Humans“).

Legal concepts/terminology used in the text:

Adoption of a treaty, according to The European Council is when; „[T]he Committee of Ministers adopts Treaties, by a decision taken by a two-thirds majority of the Representatives casting a vote and a majority of the Representatives entitled to sit on the Committee. When adopted, the text of the treaty is definitive“ (Glossary, Council of Europe, 2011).

Entry into force is according to the Council of Europe: „[T]he treaty comes into force when a sufficient number of States have expressed their consent to be bound by the treaty. Then, the treaty has a legal existence in the international legal system and in the legal systems of States Parties“ (Glossary, Council of Europe, 2011).

Jus cogens: „Compelling law or „higher law“.

Protocol is according to the Council of Europe conceptualised as: „[A] protocol is a legal instrument, which complements, amends or modifies the main treaty“ (Glossary, Council of Europe, 2011).

Ratification is according to the Council of Europe conceptualized as: „[R]atification is an act by which the State expresses its definitive consent to be bound by the treaty. Then, the State Party must respect the provisions of the treaty and implement it“ (Glossary, Council of Europe, 2011).

Treaty is according to the Council of Europe; „an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation“ (See Article 2 of the Vienna Convention). The European Treaties Series contains „conventions“, „agreements“, „charters“, codes, framework convention and outline convention. All these legal instruments are treaties as defined by the Vienna Convention“. (Glossary, Council of Europe, 2011).

1.8. Chapter Outline

Chapter one introduces the topic of child trafficking in South Africa and accounts for the methodology used in this study. An overview of available international facts on trafficking in women and children is presented in the first chapter. Furthermore, the importance of

international norms for policy-making is mentioned and international treaties relevant for the subject matter are briefly illuminated.

Chapter two provides an overview of literature on trafficking in humans and especially on sex trafficking of children. This chapter accounts for a paradigmatic shift on children's rights, constituted in the United Nations Convention on the Rights of the Child. This chapter is divided into sections of relevant sub topics for the subject matter such as the relevance of migration, tradition and to some extent culture

Chapter three introduces a theoretical framework that relies on constructivism and the evolution of norms. The discussion on how norms are created is addressed in this chapter. The chapter is divided into sections that present the theoretical framework for this study that consists of constructivism, and to some extent institutionalism, international law and the role of international organizations.

Chapter four is a case study on South Africa. This chapter is divided in two sections. The first discusses literature on trafficking in women and children in the South African context and it highlights the reality of that children are being trafficked within as well as to and from South Africa. The second section discusses international and domestic law regarding trafficking of children. The most relevant acts and policy proposals are outlined and discussed in this chapter.

Chapter five provides an analysis and a concluding discussion. The norm evolution model by Finnemore and Sikkink (1998), introduced in chapter three is utilized and the theoretical framework is applied to the case of South Africa. The lack of data and especially the lack of new data is problematic, due to the nature of the subject matter data is difficult to gather. However, the lack thereof is therefore an issue for this study and more importantly it is highly problematic as it complicates not only academic research. Additionally, it complicates policy-making and law enforcement on trafficking of children as the lack of data and accurate information complicates the understanding of the complexity of trafficking of children on the social level. This is also the case, to some extent on the institutional level with regard to law enforcement and policy implementation.

Chapter 2 – Literature Review

2.1. Introduction

This chapter will provide a literature review as a platform for the following chapters concerning the theoretical framework for this study and subsequently the case study of South Africa in chapter four. The aim is to give an insight into literature on child trafficking, sexual exploitation and children's right. I will initially elaborate on relevant facets such as the normative development of children's rights. Following, the text will illuminate practices of concern with reference to sex tourism and local practices that exploit children, this will further be discussed in the case study in chapter four. Some of the literature on trafficking in humans and especially the literature on sex trafficking in women apply to child trafficking as well. Therefore, the author deems it necessary to, in parts, make use of scholarly articles and reports concerning trafficking in women, hence, there may not be a special reference to children. The reason for this is that research on trafficking in women commonly includes trafficking of children.

2.2. Paradigmatic shift in children's rights.

The aftermath of the Second World War saw a paradigmatic shift in the international stance on the rights of the child (Dillon, 2008; du Plessis, 2004: 103). According to Dillon (2008: 150) children were previously considered the matter of the family but after the Second World War children gained more specific human rights. These were developed with the aim to cover a larger spectrum of circumstances where children previously risked to be unprotected by Human Rights. The children's rights movement in the 1970's changed the perspective on the child from the aforementioned notion, which conceived the child as a „matter of the family“ to an actor with his/her own voice (Dillon, 2008: 153). The 1989 UN Convention on the Rights of the Child (CRC) embodies the international changed stance on the subject matter. The CRC is the most widely ratified UN treaty, and only two states have chosen not to ratify the treaty⁵. Somalia and the United States⁶ have signed the CRC but have yet to ratify it. According to a report by 2009 Human Rights Watch (HRW) there have been concerns in the US that the ratification of the CRC would weaken parent's rights regarding their children. However, the report is critical of the position taken by the US since the „CRC repeatedly

⁵ This is up to present date 14 September 2011, the United States and Somalia. Both parties have signed the treaty, which means that they are willing to apply the standards of the CRC in their national policies. However, Somalia is without a functioning government and thus unable to ratify the treaty.

⁶ Nevertheless, the US *has* ratified the two optional protocols to the CRC.

emphasizes the importance, role, and authority of parents in providing direction and guidance to their children" (HRW, 2009: 5). According to Dillon, the critique of the CRC stems from traditional family values and the aforementioned notion, that children are the matter of the family (Dillon, 2008: 153).

The two additional protocols to the CRC are examples of how existing international policies have not managed to cover different aspects of crimes, in this instance, specific crimes against children⁷. The OPSC and the Optional Protocol to the CRC on Children in Armed Conflicts were adopted by the UN in 2000 and entered into force in 2002 in order to cover areas that previously were not fully covered in international children's rights.

According to article 10.1 in the OPSC, states should aim to strengthen the international cooperation in order to prevent criminal acts where children are targeted. These include the sale of children, child prostitution, child pornography and sex tourism. The strong linkages between the aforementioned examples of child abuse have been outlined in the literature on crimes against children (Wahlberg and Jagefjord, 2010: 17; Farley, 2003; Kelly, 2002: 14). It has become an undisputed reality that children are victims in international crime as well as victims of war.

Carpenter (2010: 17) estimates that between 1995 and 2010, over ten thousand children were born of wartime rape or sexual exploitation. This estimation is alarming, let alone this is over a time period when the international community has become increasingly aware of atrocities against children. The treaties described above are examples of how international organizations and states are striving to create a safer environment for children. Carpenter, a prominent scholar on the topic of children's rights assert that; „[T]he most important legal instrument articulating children's rights is the 1989 Convention on the Rights of the Child" (Carpenter, 2010:18). The two optional protocols to the CRC are therefore, instrumental in refining children's rights in international as well as in domestic law.

The last two decades has seen a substantial increase in the international community's attention to the trafficking of children. The increased mobility of people in the international arena and the rising migration numbers facilitate this phenomenon considerably. Globalisation and the impact of new technology has become an additional tool used by the sex industry. Loubser (2010, 17-18, referring to Makkai, 2003: 2) asserts that the internet can

⁷ One of the optional protocols concerns children in violent conflict and the other one, which is of interest for this study, is concerned with sex crimes against children.

function as a tool to coordinate illicit activities as it is an anonymous and efficient forum through which one can reach numerous of people across the globe. An example of this is evident in a report by the International Organization for Migration (IOM), which found that sex tourists in Malawi used local children to produce child pornography, which was subsequently distributed over the Internet (Martens, Pieczkowski & van Vuuren-Smyth, 2003: 83-84). Furthermore, the report explains that Malawi has become a „hot spot“ for European sex tourism, predominantly from Germany, the Netherlands and the United Kingdom. Paedophiles encounter poor children and with promises of education or work, lure them to Europe where the children often „disappear“ (Martens, Pieczkowski & van Vuuren-Smyth, 2003: 83-84).

2.3. Migration

Migration patterns have substantially changed over the last century. In the case of South Africa, this is especially true for the last two decades. The end of apartheid in South Africa led to changed migration streams in the Southern African region. The transition to democracy also meant less strict immigration laws and border controls. One of the consequences was that both registered and unregistered immigration increased (Crush, Williams & Peberdy, 2005: 1; Posel, 2003: 2). During the latter years of apartheid, the country was generally detached from the international economy. But, the transition to democracy brought with it more globalised migration from other parts of the world, especially from the neighbouring African countries (Crush et al., 2005: 1).

According to a report published by the Global Commission on International Migration (GCIM)⁸ in 2005, there was a lack of data on children migrants in the Sub-Saharan African region (Crush, Williams & Peberdy, 2005: 15). However, they found that in 2003 there was an influx of unaccompanied child labour migrants from Zimbabwe (situated on South Africa’s north eastern border). These child migrants were predominantly looking for work as a result of an economic crisis in their country of origin (Crush, Williams & Peberdy, 2005: 15). Victims of trafficking often reside in the host country without valid travel documents and without a valid residence permit. Migration, especially poverty related migration (in similarity with migration caused by conflict), creates situations when people are vulnerable, especially children.

⁸ GCIM later closed down.

According to the 2009 Human Development Report (HDR), published by the United Nations Development Program (UNDP) „social and economic exclusion, violence and exploitation at home or in the home community increase vulnerability to trafficking. So too does the naïve belief in promises of well-paid jobs abroad“ (Rodríguez et al., 2009: 66). Due to strict migration laws, it is becoming harder to migrate - in legal terms - to many countries. Regardless of this, people are often desperate to find better living conditions, which have the propensity to lead to irregular migration. The motivations for why people choose to migrate and reside in a country illegally vary from case to case. Although the author acknowledges the aforesaid in this study, the aim is not to discuss this at length here, as the scope of this thesis is limited. That said, irregular migrants⁹ that reside in a country without valid residence permits often fear the possibility of being denied refugee status. If this is indeed the case, these irregular migrants find themselves highly vulnerable since they, as a result, remain unprotected by the legislation in the host country. It is therefore safe to say that irregular migrants are at greater risk of exploitation than those that regard their migration as planned and logistically sound (Loubser, 2009: 17).

High-speed developments in technology facilitate travelling and contribute to increased mobility. The technological development has additionally made children more vulnerable than ever and it plays a significant role for trafficking in human beings. Trafficking of children occurs within countries as well as across the borders of countries.

The 2009 United States Department of Labour - country profile - on South Africa, finds that girls are trafficked within South Africa as well as from and into the country. Trafficked girls, according to the report, were targeted for the sex industry. Additionally, it found that boys that were trafficked within South Africa predominantly risked to be trafficked for tasks such as street vending and farm work. The IOM report, authored by Martens, Pieczkowski & van Vuuren-Smyth (2003), finds that one stream of cross-border child trafficking is coming from Lesotho. The report posits that many of the border towns of Lesotho are sources of child prostitution as well as of organised child trafficking to Bloemfontein in South Africa (Martens, Pieczkowski & van Vuuren-Smyth, 2003: 40). According to the 2009 HDR report, the most common reason for trafficking is the sex industry „[S]exual exploitation is the most commonly identified form of human trafficking (about 80 per cent of cases in the UNODC

⁹ Used instead of the term „illegal immigration“ that has connotation with other criminal activity, which is not necessarily the case for immigrants residing temporarily or permanently in a country without valid residence permits/visa.

database), with economic exploitation comprising most of the balance" (Rodríguez et al., 2009: 66).

2.4. Crimes against children and the gender aspect

Crimes that are of extra concern regarding children, are; „rape, sexual slavery, enforced prosecution, forced pregnancy or any other form of sexual violence of comparable gravity" (Bakker, 2010: 5). It has been well established in the literature presented in this study as well as in the OPSC and the earlier treaties, that it is necessary to be gender conscious when researching crimes against children. The reason for this is the nature of crimes that children risk being exposed to. A report published by the South African children's rights organization „Molo Songololo" confirms that girls face potentially higher risks to be trafficked.

The report asserts „[G]irl children are the primary targets, although boy children have also been identified as victims. Girl children range in age from four to seventeen years" (Koen, van Vuuren & Anthony, 2000: 1). The 2009 HDR report accordingly addresses the gendered dimension of trafficking. This is clear when they write „most people that are trafficked are young women from minority ethnic groups" (Rodríguez et al., 2009: 66). The prevalence of girl victims of trafficking for the purpose of selling sex is undeniably higher. However, it is important to take note that boys also face the risk of becoming victims of sexual exploitation. According to Rodríguez et al. (2009), male victims of sex trafficking/sexual exploitation may avoid seeking help or reporting „for fear that they will be refused victim status" (Rodríguez et al., 2009: 66).

Most literature on the topic is thus stressing that girls are at higher risk of becoming victims of sexual exploitation and sex trafficking. This is also recognised in the several UN treaties regarding the subject matter. The OPSC is clear on this matter. It places importance on gender consciousness, and the OPSC places priority on the sale of children, child prostitution and child pornography across the board. Important to note is that the aforementioned three variables are directly linked and related to child trafficking. The industry of child trafficking had been identified by various scholars prior to the adoption of the OPSC. Westwood argues: „[P]rostitution is now recognised as a major component of the emerging global market – a vibrant multinational sex trade which involves millions of children, particularly girls, and which generates billions of dollars profit for the traffickers involved. The demand by

wealthier countries for cheap sex workers is a major motivating factor in the recruitment by various means of women and children for the extensive and lucrative sex industries" (Westwood, 1998: 1 in Koen, van Vuuren & Anthony, 2000: 4). However, it is once again important to stress that both boys and girls are victims of child trafficking for the sex industry.

Trafficking of children occurs for various reasons and the aim of the trafficker is not always targeted at the sex industry. It should be noted that traffickers are not always men, as so often incorrectly assumed. Women traffickers are present and active in many parts of the world as well. According to the 2009 report by the United Nations Office on Drugs and Crime (UNODC) titled the „Global Report to Trafficking in Persons" (TIP), men constitute over 90% of prisoners globally. Men are also generally overrepresented in crime. This, however, does not apply to the case of trafficking (Sarrica et al., 2009: 10). According to the aforementioned report, perpetrators of trafficking are often women. These women are frequently part of criminal networks in both the country of origin (for the victim of trafficking) and the country of destination (Sarrica et al., 2009: 10).

The state has the primary responsibility to prevent trafficking of its children, yet there are many organisations, NGOs and IOs that work with the prevention of trafficking of children as well. However, these are often „ex-post-case provisions" as they help children that have already been victims of trafficking. Examples of organizations that work with prevention and/or victims of trafficking are: IOM, ECPAT, UNICEF, Save the Children and Molo Songololo to name but a few. Trafficking of children frequently occurs over state borders, often with actors connected in international criminal networks that are operating in numerous countries (Skinner & Maher, 2004; Loubser, 2009, 18, Martens, Pieczkowski & van Vuuren-Smyth, 2003).

Loubser posits that one of the reasons why child trafficking is difficult to combat may be due to a lack of interest by those who could defeat the problem. In cases where government officials have been involved in trafficking of humans, it is, according to Loubser (2009:18), intrinsically difficult to efficiently work against human trafficking in that specific case or country. According to Loubser (2009: 19) referring to Wyler, Siskin & Seelke (2009: 3-5), international criminal networks involved in trafficking of humans often have ties to organisations such as the Italian Mafia, Eastern European and Russian criminal syndicates.

However, trafficking is not always organised by sophisticated networks. According to Loubser (2009: 19), there are several „amateur“ traffickers engaging in the illicit trafficking of children, women, men, boys and girls. This is evident in the aforementioned IOM report, which indicates that sexual exploitation of children occurs in both organised networks and by individual paedophiles (Martens, Pieczkowski & van Vuuren-Smyth, 2003).

2.5. Different forms of child trafficking

Other known reasons for trafficking of children are cheap labour and to commit lighter crimes such as pick pocketing. According to a report by the Swedish Police force, children were trafficked into Sweden in order to beg on the streets and to commit „lighter crimes“ (Wahlberg and Jagefjord, 2010: 15). The aforementioned report finds that there are cases of child trafficking where traffickers have travelled legally with children in the constellation of a family in order to „not draw attention“. However, when these „family units“ have reached the country of destination - Sweden or other European countries - they are found to be part of criminal activities. This type of trafficking of children is not necessarily with the purpose of selling sex and according to the report by the Swedish Police force; the children often have strong emotional ties to the adults that are their illegitimate guardians (Wahlberg and Jagefjord, 2010: 15-16).

European child traffickers that operate in Malawi use a similar system. Martens, Pieczkowski & van Vuuren-Smyth (2003: 82), disclose how the traffickers would make contact with local Malawian children in tourist resorts often through expensive gifts and promises of a better life for the child. They habitually also gain the trust of the family of the child by assuring a „better life for the child“. The report indicates that it is possible that the parents would sign travel documents, which would enable the trafficker to legally travel with the child to Europe (Martens, Pieczkowski & van Vuuren-Smyth, 2003: 83).

2.6. Critique of the research on trafficking

Loubser (2009: 15) is critical of the fact that most research on trafficking is conducted by a range of organizations, lacking one global authority coordinating data collection. However, both the UN and IOM conduct research that is used in this study on the subject matter. Loubser’s argument is thus true in the sense that the data collection on trafficking is mainly authored by NGOs as a part of their work to combat trafficking. According to Kelly, it is

problematic that the scholarly research on trafficking in persons rarely contributes „new data“. Rather, the debate seems to focus on the intellectual understanding of the subject matter instead of efficient suggestions on how to combat trafficking (Kelly, 2005: 236).

Additionally, Kelly is critical of the fact that the main focus – internationally – has concerned sex trafficking, therefore neglecting other forms of human trafficking such as labour trafficking for domestic work (Kelly, 2005: 235). Difficulties surrounding data collection is not only a problem regarding trafficking of children (and adults), it concerns irregular migration by and large (Koser, 2005: 8). The lack of data on irregular migration is clearly of concern for researchers. According to Koser (2005: 8), one can detect that trafficking is seemingly more in focus than other irregular migration.

Another problem related to this is the lack of precise definitions of trafficking in humans as well as trafficking of children, the sale of children and other concepts that are related to the aforementioned. The vague definition of the concepts together with statistics produced by a variety of methodological approaches conducted by multiple actors are further more contributing to an unclear field of research (Loubser, 2009: 14).

Kelly outlines a number of factors that are problematic in terms of research of trafficking in humans. Her critique surrounds the issues of methodology, narrow time frames and that it is commonly financed by IOs and NGOs and need to be policy relevant (2005: 236). This, according to Kelly leads to research that lacks accuracy and „methodological transparency“ (Kelly, 2005: 237). In terms of methodology, it is important to note that research on child trafficking and trafficking in humans has, and should have, a different point of departure. Especially regarding child sex trafficking. Child sex trafficking cannot be legitimized in any circumstances with reference to the „child“s own will“. However, sex trafficking of adults is surrounded not only by a methodological debate of how to go about the subject matter; the scholarly work is to a very high extent coloured by different ideological standpoints.¹⁰

There is an international consensus on that trafficking of children is always an illicit act, regardless of the level of voluntariness of the child. Concerning trafficking of women, however, there is no consensus among the different actors involved in the work against

¹⁰ See for instance, Augustin, Laura 2008.

trafficking of women. One side argues that all women that are trafficked for the purpose of selling sex are victims; the other side holds a liberal stance towards prostitution and argues that adult women have their own voice and choice. Hence, according to this view liberal migration laws would solve some of the issues of trafficking in women.

There are naturally grey zones in between the two stances; the following chapter on theoretical framework will provide a short overview of the two mentioned approaches to trafficking. This is relevant due to the fact that research on trafficking of women often includes a section on trafficking in children. According to Kelly: „Pure research studies and detailed research evaluations continue to be extremely rare, and a limited number of established social scientists are involved in exploring the contours of human trafficking. These patterns contribute to several methodological weaknesses in the field“ (Kelly, 2005: 236).

Kelly’s critique of the methodology and data collection in the field is highly relevant and evident in a report prepared by the Human Sciences Research Council in South Africa; „Tsireledzani: Understanding the Dimensions of Human Trafficking in Southern Africa“ (the report will henceforth be referred to as „Tsireledzani“) commissioned by the National Prosecuting Authority of South Africa (NPA) and authored by Allais et al. (2010). The report was supposed to cover trafficking of women and children in South Africa and was presented as a rather large undertaking, presented in a document comprising of two hundred pages. However, the sources are few and most of the data in the report was drawn from research conducted by the NGO, Molo Songololo, providing a thin platform for further policy-making, which was the purpose of the report.

This has met critique by Gould, Richter and Palmery in their article „Of Nigerians, albinos, Satanists and anecdotes a review of HSRC report on human trafficking“ (2010). Gould, Richter & Palmery argue that „Tsireledzani“ lack substance in terms of the data it builds on (Gould, Richter and Palmery, 2010). According to Kelly remarkably little is known on trafficking of children compared to trafficking of adults.

2.7. Traditions, practices and culture

A highly relevant remark by Kelly for this thesis is that „having sex with minors has become less acceptable in much of Europe“ (2005: 246). In addition, the institutionalisation of „when childhood ends“ has made a clear mark on who is considered a minor and who is considered an adult. With regards to age, South Africa has conflicting norms, practices and policies concerning this contentious issue. South Africa is one of the few countries in the world where babies are raped and where sections of the society have the belief that having sex with a virgin will cure them from HIV/AIDS (Flanagan, 2001). Reportedly, South Africa has the highest number of child rape cases in the world (Richter, Stein, Cluver & Kadt, 2009: 69). One of the reasons for this is the aforementioned myth of that intercourse with a virgin would cure diseases. According to Jewkes (2004 in Richter et al., 2009: 71) this belief has been traced back to the 16th century in Europe but also to other parts of the world. The high prevalence of child rape in South Africa is, however, not necessarily due to the aforementioned myth as there is weak evidence that the myth would be the main reason for the high numbers of child rape according to Richter et al. (2009: 71). Richter et al. (2009: 71) posit a number of possible explanations to the high numbers of child rape: „It has been argued that loose ties of affinity between children and families, due to the absence of formal marriage and marital commitments, have been argued to leave children unprotected and exposed to sexual and other forms of abuse“ (Richter et al., 2009: 71). Alternative explanations illuminated by the aforementioned authors are gender structures and the level of male violence towards women and children. Certain practises that take place in the name of culture or tradition in South Africa are in some cases a matter of concern.

According to three articles by Internet based news channel 24, published on February 3 2011(a), March 23 2011(b) and on August 31(c) a tradition practiced by Xhosa speaking tribes in the Eastern Cape and in Kwa-Zulu Natal, called Ukutwala, entailed abduction of young girls as a means to start marriage negotiations with the girl and her family. The tradition does, according to the article published on March 23 2011, lead to forced marriage to older men in the community. Some of the girls abducted were fourteen years old. The aforementioned article stipulates that the elderly in one of the villages concerned, had been informed that the practice is an illicit act, consequently the elderly promised to stop the tradition (News24b, 2011). The stance on sexual interaction with minors should play a role here for: a) sexual patterns and, b) for the demand of children in the sex industry of South

Africa. The facts in terms of existing data on the subject matter might be thin; but the reports that exist on trafficking of children in/to/from South Africa are alarming and show that the phenomenon is on the rise (Dillon, 2008: 129; Martens, Pieczkowski & van Vuuren-Smyth, 2003; Allais et al., 2010). Trafficking of children is difficult to combat. Policies concerning the combat of child trafficking need to be context specific but also comprehensive and have the ability to cover a broad spectrum of possibilities. Dillon mentions that in the case of the United States, policies have not been successfully implemented by the police: „The expectations set by the State Department are also skewed; passing legislation appears to be of great significance, whereas it is often the gap between laws passed and police performance that is most problematic in the human trafficking context“ (2008: 131).

2.8. Children’s rights and rough estimates from the margins

Crimes against children are becoming increasingly recognised by the international community. However, according to Aptel (2010: 3): „the legal framework regulating the international courts“ procedures and operations include only very few provisions pertaining explicitly to crimes committed against children, or to the specific rights and needs of children“. The legal framework on a national scale varies from country to country but due to the UN treaties, most states adhere to the same goals in terms of guaranteeing the rights of the child.

The numbers of how many children that are trafficked in different locations around the world are estimates. According to 2007 BBC news channel documentary on child slavery, 8.4 million children in the world are enslaved (The World: Child Slavery, 2007).¹¹ „They are children, not a number“. This quote by South African journalist Rageh Omaar, presenting the aforementioned documentary, encapsulates that the estimates of child trafficking is extremely problematic. It is problematic in terms of the articulated risk of „seeing a number and not the children“. Additionally, it is problematic due to the lack of data and the sometimes faulty data collection methods. This argument is highly relevant concerning child trafficking. International norms“ condemning child trafficking and more forcefully condemning child sex trafficking is clearly a step forward. Without strong law enforcement mechanisms in combination with poverty and the high demand for children in the sex industry, traffickers are likely to continue with illicit activities. Dillon further illuminates the rough estimates of

¹¹ This is according to the estimates at the time the documentary was produced, in 2007.

hundreds of thousands of children being trafficked for different reasons every year. NGOs and other interest groups strive to raise awareness on the topic, but Dillon calls for a further contextualised law enforcement mechanism (Dillon, 2008: 163). This thesis is focusing more on sex trafficking of children, which is in line with Dillon's stance on „human trafficking“ being „too large a basket“ (Dillon, 2008: 164). Dillon is critical of the broad definitions of „human trafficking“ as „global sex trafficking and sex slavery, especially, but not exclusively, where children are involved, have no broadly understood explanation“ (Dillon, 2008: 165). This is a contrasting view to other forms of trafficking; concerning sex trafficking of adults, a completely different debate needs to be considered¹² than the one regarding child trafficking. This applies to other objects that are being trafficked, such as drugs that according to Dillon should be analysed differently and separately (Dillon, 2008: 165). However, the common „blurring“ of the different components in trafficking in humans, sex trafficking, child trafficking, sex child trafficking is not due to negligence. Child sex trafficking is often one of the activities performed by international criminal networks (ICN) (Dillon, 2008: 167-168). The development of ICNs engaging in child sex trafficking in combination with the determining factor of the demand has brought child sex trafficking „from the margins to the mainstream of economic and social life“ (Dillon, 2008: 171).

¹² That between different viewpoints on prostitution, the liberal versus the abolitionist's stance on prostitution. That is relevant to competing perspectives on policymaking concerning trafficking, should it be viewed as labour migration (liberal view point) or should it be viewed as a form of human slavery, hence the trafficked women are victims (abolitionist view point).

Chapter 3 – Theoretical Framework

3.1. Introduction

This chapter will present a theoretical framework of constructivism in order to frame the discussion that will follow in the last chapter, on the analysis of the case study. A short overview of institutionalism will further add support to the theoretical framework and to the critical analysis to be made in the concluding chapter. I will draw on aforementioned theories to explain the theoretical standpoint for this thesis. International law and the international criminal courts have a norm setting function concerning the rights of the child. International Organizations such as the UN produce norms and are platforms to disseminate certain ideas and norms. International organisations do that through treaties, international policies and regulations. International organizations create international normative standards for the international community as well as for domestic policies. The CRC that was adopted in 1989 is one such example. The discussion on how norms are created will be addressed in this chapter. The sections in this chapter will provide a brief introduction to the role of International Law, Institutionalism, Constructivism and the role of IOs. This is the theoretical framework that will be used for analysis of the case study of South Africa and trafficking of children.

3.2. International Law and Child Trafficking

In the field of international law, voices have been raised that „child sex trafficking should be identified as a *jus cogens*¹³ violation“ (Dillon, 2008: 123). This refers to the notion of a crime that due to its gravity concerns all states, which therefore should act upon it. The concept of *jus cogens* concerns states“ normative stances on grave crimes that are, or should be of international concern. Such crimes are war crimes, torture and crimes against humanity (Birdsall, 2009: 12). Dillon (2008: 123) is critical of the focus of International Human Rights law and the limited focus sex trafficking has received from international legal institutions. This study has previously touched upon the difficulties in terms of how to estimate the level of voluntariness and the level of victimization regarding sex work and trafficking of adult women. Concerning trafficking of children however, the level of victimization is not questionable. It is complicated to come up with legitimate legislation concerning such a contentious issue as child trafficking. However, it is of urgency and absolutely necessary.

¹³ Compelling higher law.

One problem concerning International Law, which is relevant for Children's rights in the international context, is the weak law enforcement capabilities. International law is binding in terms of the mutual agreement in the ratification of a UN treaty. When a party breaks the agreement there are often no forceful consequences in terms of an international authority that enforces breakage of international law (Birdsall, 2009: 39). However, there are international legal institutions that handle international crime such as war crimes. One example is the International Criminal Court (ICC) that was formed in 1998 and deals with war crimes and human rights violations (Birdsall, 2009: 13). Dillon posits that child trafficking cannot and should not be treated only in legal terms. It is the demand for children in labour and in the sex industry that creates the concern of trafficking of children (2008: 125). If it were not for the purchasers of sexual services by children, the traffickers would have to look elsewhere for an income.

The „Convention on the Rights of the Child“, the Statutes of the Special Court for Sierra Leone and the ICC are legally binding instruments concerning children and criminal responsibility (Bakker, 2010: 21). According to Bakker there is an increasing consensus on how to handle crimes against children. Bakker notes that this is evident in resolutions adopted, and decisions made by international actors such as the United Nations (Bakker, 2010: 21). International legal institutions dealing with crimes against children are first and foremost the International Criminal Court (ICC), the Special Court for Sierra Leone. Previous International Tribunals have included crimes against children in other atrocities but are now being treated specifically (Aptel, 2010: v).

It has been difficult to find literature concerning the specific impact of the OPSC and whether the articles in the protocol are being respected by the countries that have chosen to ratify. The choice to focus on trafficking of children facilitated finding relevant literature in terms of articles and research reports concerning trafficking of children.

3.3. Approaches in the Field

The dominant stances on prostitution in general are the two opposing sides of „abolitionist feminists“ and the „liberal feminists“. The two blocks are representative for predominantly European and North American views on the subject matter. The debate has revolved around prostitution and trafficking in women and children for the purpose of selling sex. Concerning trafficking of children, however, there is no divide in terms of ideological approaches to the

subject matter such as in the aforementioned example. Discussions rather concern the best way to go about the subject matter. The views on how to combat trafficking varies among scholars, IOs and different national help organizations.

The Swedish International Development Cooperation Agency (Sida) is explicit in the agency's stance on the topic in the report „Against Trafficking in Human Beings“ (Kvinna till Kvinna & Kvinnoforum, 2005). The report was authored by two women's organizations in Sweden and published by Sida in May 2005. In a section on overall recommendations for combating trafficking it is suggested that „Sida should shift focus from supporting interventions with a victim's perspective towards an empowerment perspective“. (Kvinna till Kvinna & Kvinnoforum, 2005: 7). Due to current legislation in Sweden, it is not a criminal act to sell sex but to purchase a sexual service is criminalised. This policy framework was developed from the idea that this would contribute to sex workers (that are predominantly women) empowerment. However, it is disputable whether this stance has contributed to a decrease in sex work in Sweden or if it rather has become less visible but is occurring in a more organized form.

Feminist critiques of human rights law often revolve the problematic view on violations toward women and children. It is commonly seen as a matter of state policies to deal with and not as a human rights violation. This means that crimes committed by a state towards its citizens is likely to be critiqued by the international community. However, crimes committed against women and children often take place in the private sphere of the home. Hence, such crimes are less likely to come to the knowledge of the state and in the broader picture to the knowledge of the international community.

Dillon argues: „Where slavery is practiced by a state, directly condoned, or enshrined in law, we are appropriately outraged. But where slavery in the form of forced prostitution is allowed to flourish by a corrupt police force, the reaction of the international community is confused, diffuse, unfocused on the human rights dimension of the problem“ (2008: 135). According to Dillon the demand for the following is due to a particularly male behaviour: „child marriage, infanticide, gendercide, sex trafficking, bride burning, bonded labour“ (2008: 135). The feminist critique of the human rights discourse in the international community is certainly valuable in that it opens our eyes to the weaknesses of legislation and treaties concerning child trafficking. Feminist theories are in similarity with other theories of international

relations (IR) useful and necessary tools for analysing international politics, international law, norms and policy-making.

Considering trafficking of children, for labour or for the sex industry a gendered lens is necessary, since the most regular purchasers of sex from minors are men and most individuals selling sex are women and girls. However, the middle hand that is the trafficker is often a woman. The argument made here is thereby that gender inequalities to a large extent is the cause of trafficking in children, most child victims of sex trafficking are girls, but women traffickers are reinforcing the exploitative wheel of trafficking regardless of their own gender. According to Dillon, however, child sex trafficking has not been combated or attempted to be combated forcefully, due to that ordinary men are the main purchasers of sexual services from children and not the identifiable „Other“ in terms of an ethnic group, members of a certain political party or religion (Dillon, 2008: 148). However, trafficking of children need to be analysed in a broader perspective, making use of a combination of theories as analytical tools.

Furthermore, Dillon argues that the view on child sex trafficking in the international community is characterized by the notion that the problem can only be resolved when the „root causes“, which is poverty is dealt with in the state where the victim of trafficking originated (2008: 141). From a feminist perspective this is symptomatic of a gender hierarchical view on non-interference in the private sphere. Traditionally the norm has been that the home is the private sphere and what happens between the walls of the home is not a matter for the public or for anyone outside of the home. If the international community is to be seen as a unified body such as described by Dillon¹⁴ (2008: 142) should it not then be high on the agenda to formulate forceful policies on the subject matter? There are trends in what is high on the agenda in international politics and there is reason to argue that the underlying reason for child sex trafficking stem from a variety of factors. In Dillon’s words, the reason why combating child sex trafficking not has had more impact in the international community is due to a „gender-tendency“. This means that since there is a gender aspect to the crime, it has not been given priority due to that women traditionally have been considered subordinated men. According to this viewpoint, child sex trafficking „[V]ictims tend to remain invisible when there are no heroic implications in effecting their rescue“ (Dillon,

¹⁴ „an international community with universal values moulded into the form of law“ (Dillon, 2008: 143).

2008: 143). In other words, since mostly women and girls are being trafficked for sexual exploitation, the interest has remained low to efficiently combat trafficking. This view, however, can also imply a more general critique on social inequalities, that it is in the interest of a few to financially benefit from other people's socio-economic situation (in the case of trafficking in humans for cheap labour) or to benefit from exploited girls lack of agency in the case of trafficking in the sex industry. In line with Dillon (2008: 155), I argue in this thesis that there is a gap between international norms on human rights/children's rights and law enforcement. In the case study on South Africa as well as in the concluding chapter on the analysis I will further discuss the legislative framework concerning trafficking in children in South Africa.

3.4. Theoretical Framework

Conflicting norms on the international, national and regional level is an issue of consideration for different actors working with children's rights. This study is framed by a constructivist approach to policy-making. The text is written with a constructivist lens assuming that ideas and norms are fundamental in policymaking. This means that it is assumed that norms are influential also by the work conducted by International Organizations (IOs), governments and institutions. Furthermore, this plays a significant role in terms of introducing international standards concerning children's rights on the national level. Applying a constructivist framework to this research means, to be more specific, that it is assumed that ideas and beliefs is the foundation in policy-making.. This theory draws on the article „Norm Dynamics and Political Change“ by Finnemore and Sikkink (1998). The aforementioned article aims to describe how norms are based on rational choices, both sociologically and politically (Finnemore and Sikkink, 1998: 911). One of the purposes with forming the OPSC is:

Believing that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and also believing in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level (OPSC, 2002).

In accordance with the theoretical model by Finnemore and Sikkink, the OPSC is meant to work as a norm-shaping treaty on the international and at the national level.

Accordingly, norms are consciously constructed by organisations, institutions and to some extent enterprises on both the national and international level. How states deal with

trafficking of children, which is relevant to this study, is coloured by the established ideas and norms concerning the subject matter. Ideas also affect the implementation of a policy and are likely to affect how crimes against children are to be dealt with, if the machinery constructed to prevent the crime has failed. Other theories of international relations are thereby not said to be irrelevant. However, the subject matter for this specific study is most suitably framed by a constructivist approach.

An example on how international law on children's rights is part of the construction of international norms is in the words of Carpenter (2010: 19): „[C]hildren's human rights codified in law apply to all children, regardless of sex, nationality, religion, social origin, birth, or other status“. Carpenter's argument emphasises the importance of striving after a global value system concerning children's rights. This is furthermore, in accordance with how many of the influential IOs and NGOs work. Dillon's stance on the topic of norms and human rights is in line with this argument, although Dillon calls for stronger law enforcement on sex trafficking of children. Moreover, Dillon emphasises that norms play an important role in terms of „embarrassing“ states or other actors that break human rights norms (2008: 159-160).

3.5. Constructivism

The main assumption in constructivist theory is that society is a construction that is based on identity, ideas and norms. According to Checkel (1998: 325), constructivism is most importantly a method of conducting research and provides a framework as well as analytical tools for how to interpret political interaction and societal events. Constructivist theory has been criticised for not holding a theory of agency, hence it over-emphasises the significance of identity and norms. According to this critical view, Constructivism neglects the sources of the ideas that, according to the critique, are the agents (Checkel, 1998: 325). Important historical events have according to some constructivists been the result of a turn in international norms. Decolonization is according to the authors of the article „International Norm Dynamics and Political Change“ one such example (Finnemore and Sikkink, 1998: 887). Realism (and to some extent liberalism) was previously, and according to many still is, *the* dominant theoretical paradigm in IR theory (Finnemore & Sikkink 1998; Schouten, 2008). According to Audi Klotz (1995) it was norms, manifested in economic sanctions by the international community towards South Africa, that lead to the transition from apartheid to democracy in South Africa. Klotz argues against the realist notion when she puts forward

that „if the United States were acting simply on strategic or economic considerations, it would not have cared about domestic racial discrimination in South Africa and would have continued its post-war policy of adamantly rejecting sanctions, even in the face of growing international pressures“ (Klotz, 1995: 452).

This notion does not go against the argument that economic interests are important and sometimes determining for political decisions. However, the constructivist stance on IR is that regardless whether a decision is fuelled by idealism, ideology or economy, it is founded in ideas that construct IR as well as policies on a national level. In the interest of constructivists lies what is fundamental to this study and as outlined by Finnemore and Sikkink in questions such as how can a norm be recognized and in what way does it change and impact on politics? (1998: 888).

One of the most important functions of the UN has been to establish international norms, which is manifested in treaties and imbued through the activities pursued by the organization. In accordance with the aforementioned argument that norms were strong determining factors for decolonization, so are contemporary norms around education and human rights shaped by norms introduced by the UN (Finnemore & Sikkink, 1998: 889).

The following section is going to go further into the role of IOs. One question that is legitimate and that has been raised by critiques of constructivism (Tickner, 1997) concerns a methodological issue of how norms can be measured. According to Finnemore and Sikkink, this is indeed complicated but through clear and concise conceptualizations norms are better analysed (Finnemore & Sikkink, 1998: 891). Norms are recognizable in that that they, or issues related to them are discussed. Finnemore and Sikkink exemplify this (1998: 982), to depict contemporary norms, the theorizing by Sikkink and Finnemore will be used. Women’s rights are, in accordance with human rights becoming increasingly standardized internationally.

For instance, it is globally generally not accepted with domestic violence. Thus, it is noteworthy that the notion to which extent this should be seen the matter of the family, varies. The international norm regardless of culture is that domestic violence is not accepted. I would like to argue that this is a norm that has been shaped by the women’s movement together with international organizations and primarily the UN and different UN departments.

The impact of the children's rights movement that led to the establishment of the CRC and the UN treaties related to children's rights is of relevance to this study. The starting point for this study is that domestic norms and policies are considerably impacted by international norms. The stance is additionally, that domestic norms can affect international norms. This argument is supported by Finnemore and Sikkink (1998: 893), their description of the relationship between norms and law is of particular interest for the composition of this study „[R]ecent work in U.S. legal circles also suggests that there is more similarity in the way norms and law work domestically and internationally than IR scholars have thought.

IR scholars have generally assumed that the existence of a coercive state able to enforce laws, made domestic order very different from international order. A prominent group of legal scholars at the University of Chicago, however, now argue that, even within a domestic setting, making successful law and policy requires an understanding of the pervasive influence of social norms of behaviour. This is a particularly compelling insight for IR scholars, since the international system is characterized by law and norms operating without direct punitive capacity. (Finnemore & Sikkink, 1998: 893).

It is imperative that one distinguishes between opinions and norms. Norms are habitual and may change over time and opinions may change faster than norms. A paradigm shift is an example of when there is a change in certain assumptions that are established in norms. Opinions on the other hand may change, drastically and quickly. Typically associated with norms is the meaning of the content, which is for something that is seen as something that is „universally good“, such norms are more likely to be expansive (Finnemore & Sikkink, 1998: 907). Characteristically, international and national norms bear the notion of being good for everyone. Conflicting norms stem from differing opinions on what is understood as „universally good“. For instance, in the debate regarding how to approach the formulation of an international treaty¹⁵ with the purpose to combat trafficking, two conflicting norms were evident. Some countries¹⁶ have developed norms regarding prostitution that victimizes women in the sex industry. In countries with a liberal¹⁷ view on prostitution, the norm is

¹⁵ The treaty referred to is the so-called „Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations convention against transnational organized crime“ (The Palermo Protocol). This will be described in chapter four in the section on international law.

¹⁶ Norway and Sweden are two countries that have criminalised the purchase of sexual services while selling sex is not criminalised.

¹⁷ The Netherlands is one example that is often referred to in terms of their liberal drug and sex purchase laws. Other examples of countries with liberal legislation on prostitution are Greece, Germany and Denmark.

rather than women who choose to sell sex are their own agents and act out of free will. In the case of the latter, the legislation is based on norms assuming that prostitution is a choice.

This example shows that two domestic norms and what is seen as „universally good“ are clashing. One view bears the notion of that prostitution is harmful and that there is a very low level of voluntariness involved (although the superficial voluntariness is forced upon women, mostly, that are of the perception that they do not have another choice of income for different and personal reasons), hence the victimization and view on the lack of agency among women in prostitution. The other view is that domestic norm emphasising women’s agency and free will in terms of adult prostitution. Both norms in this case entail notions of what is „universally good“ and have varying standpoints on the matter. In the international arena they clash in the attempts to coordinate the authoring on a treaty dealing with issues closely related to the subject matter.

John Boli and George Thomas (in Finnemore & Sikkink: 1998; 907) identified five principles that according to Boli and Thomas are essential for „world culture“ and that are imperative for the success of an international norm; „universalism, individualism, voluntaristic authority, rational progress, and world citizenship“. In terms of the influence of international norms and law over domestic norms and law „voluntaristic authority“ is imperative. It refers to people’s voluntarily choice of what is good and beneficial for the society, this becomes the standard of choice, the norm.

Many of the international treaties depend on the state parties to voluntarily implement ratified treaties since international law often do not have sanctions for states that do not live up to their ratification promises. Finnemore and Sikkink systematize the norm creation process into three stages. Initially the „norm emergence“ occurs, the „norm cascade“ follows this and lastly the „internalization“ stage takes place (Finnemore & Sikkink, 1998: 896). One of the critiques against research founded in the constructivist norms approach is that it is unclear which norms will become established and which norms will not.

Another question revolves around under what conditions norms are established (Finnemore & Sikkink, 1998: 905). Seemingly, norms are best identified when they have been established in the form of treaties, legislation, institutions and attitudes. The latter is, however, difficult to measure. This study is mainly interested in established norms that are embodied in legislation or on the way to become embodied in a policy or law. Norms are not per se created out of

altruism or empathy and the aim might not be for the common good or protection of the vulnerable. It may as well be out of certain interests stemming from religious beliefs or cultural practices. The norm in a traditional patriarchal society would likely put men in a more favourable position than women in terms of societal status. Here some feminists would argue that very few societies are not patriarchal and gender inequality is the norm rather than the exception globally and the degree of gender inequality varies.

The model by Sikkink and Finnemore, presented on the next page, concretely explains the relationship between different actors, motives and mechanisms that are relevant for theorizing on the relation of international norms and domestic norms. This model will be further utilized in chapter five for the critical analysis. In the initial phase of the norm emergence, the so-called norm entrepreneur is essential for starting the process. The role of the norm entrepreneur is to come up with the idea that is to be established. The idea may refer to issues of morality, which is the case in terms of human rights and related fields concerning ethics.

The second phase of the norm cascade entails either finding an appropriate platform or creating a platform that can be used to establish the norm. This is the initial stage of institutionalizing the norm; the platform can be an organization with a clear interest profile such as a NGO. It can, to exemplify, also be an international network or big established organization such as the World Bank that functions as a platform.

Finnemore and Sikkink depict the norm process in following table:

Table 1

Norm evolution

	Stage 1	Stage 2	Stage 3
	<u>Norm emergence</u>	<u>Norm cascade</u>	<u>Internalization</u>
<u>Actors</u>	Norm entrepreneurs with organizational platforms.	States, international organizations, networks.	Law, professions, bureaucracy.
<u>Motives</u>	Altruism, empathy, ideational, commitment.	Legitimacy, reputation, esteem.	Conformity
<u>Dominant mechanisms</u>	Persuasion.	Socialization, institutionalization, demonstration.	Habit, institutionalisation.

(Source: Finnemore & Sikkink, 1998: 898).

Important in all cases is the support by states in order to win impact. In phase two, the norm is being accepted by an increasing number of states and has often been embodied in an international treaty. This stage is a socialization process, through the now established norm, states and institutions are changing behaviour in order to behave and make sure that people act in accordance with the norm. Even though not all influential norms are manifested in international law, „naming and shaming“ is one example of how countries not adhering to established laws are affected by the norm in question. Finnemore and Sikkink confirm this view: „leaders of states sometimes follow norms because they want others to think well of them, and they want to think well of themselves“ (1998: 903). It is essential for states“ actions and policies to receive internal as well as international recognition in terms of legitimacy and accountability.

International legitimacy contributes to the domestic legitimacy, which by Finnemore and Sikkink is conceptualized as follows, „[D]omestic legitimacy is the belief that existing political institutions are better than other alternatives and therefore deserve obedience.

Increasingly, citizens make judgments about whether their government is better than alternatives by looking at those alternatives (in the international and regional arena) and by seeing what other people and countries say about their country. Domestic legitimation is obviously important because it promotes compliance with government rules and laws; ruling by force alone is almost impossible" (Finnemore & Sikkink, 1998: 903). This quote further supports the effectiveness of „naming and shaming“.

The last phase called „Internalization“ occurs when norms are so well established that they are taken for granted. The norms that have reached this stage may be so internalized that they are not reflected upon but rather seen as „the truth“. Finnemore and Sikkink point out that the fact that „Internalized“ norms may be extremely powerful since they usually not are questioned (1998: 905). According to theorists of norm creation, there are as outlined previously, three stages of how the norm is brought about (Birdsall, 2009; Finnemore & Sikkink 1998). If one applies this to the international legal system, the ICC can be understood as the third step in the creation of a norm on human rights. This means that the norm has become institutionalized.

The institution, in this case the ICC, is the platform for implementing the norm, this way the norm is being implemented in the case of war violations of human rights. The platform also helps spreading and implementing the norm in countries that are not directly touched by war or seen as offenders of human rights. Finnemore and Sikkink“s article provides substantial arguments to how and why norms are significant in the study of politics.

Concerning this study norms are imperative, the case study on South Africa will, together with the subsequent chapter on findings, analyse how norms impact on policy-making and what has been in conflict regarding implementation of policy. However, international norms are without a doubt powerful but conflicting norms on subject matters do exist. For instance, referring back to the clash of differing cultural or national norms in an international context, Van Bueren“s (1998: 33) argument used in chapter one depicts my argument „[S]tates hold such fundamentally conflicting views as to when childhood begins that they cannot be reconciled simply by the device of a treaty“.

This section has provided an overview of constructivism, putting forward the argument that ideas matter and together with identity and norms these factors are fundamental for how

society operates. International norms regarding human rights, women's rights and children's rights become, through the treaties that embody them, with time viewed as „normal“. Yet, there are clashes of normative frameworks. Certain traditions or customs are the norm in the context where they are being practiced. Hence, if a certain practice is against an international norm on a subject matter that is supported by a domestic law, a tradition may be considered as a criminal activity according to the judicial system. For instance, in chapter two, I mentioned the practice of abduction of young girls by a tribe in Kwa-Zulu Natal. This is an example of a clash of norms and policy and additionally a criminal act. The question of whether this should be considered as a criminal action or not is not to be discussed in this study. However, it is the author's belief that this, too, need to be considered contextually. The chapter on South Africa will subsequently show that there are undeniably areas that are unclear, where some customs do go against South African law.

The relations between the national and international policy are changing. This is of high relevance in the study of IR and has a highly practical meaning in the discussion of trafficking of humans. In this study, this is evident as international policy is considered in relation to how it is affecting domestic policy. With regard to child trafficking this is apparent in many ways. Firstly, children are trafficked over national borders and sometimes to different continents, the globalisation of exploitation of children facilitate the illicit activities of the trafficker. Secondly, in order to combat child trafficking, international treaties are obliging the ratified parties to create legislation that requires cooperation over nation borders. According to Sasken (2011) the international realm is evolving

[T]he domain of global politics has expanded to include a growing diversity of other actors and vectors –it now includes, besides the familiar actors, such diverse entities/ideas/manifestations as the politics of Tahir Square in Cairo, the informal jurisdictions that the Somali pirates have carved out, and the power of global financial institutions over national state policy even in the most powerful states.

Sasken includes organized crime in her argument on international actors (the Somali pirates); child trafficking is a lucrative business due to international organized crime that owing to aforementioned factors such as globalization and increased mobility continue to operate. In instances such as child trafficking, the global and the domestic are closely intertwined factors. In terms of the engagement to combat the trafficking of children the same factors are important but for other mentioned reasons.

3.6. Institutionalism

Institutions play an integral part of this study. There are different schools of thought in institutionalism and scholars differ between Institutionalism and New Institutionalism. Within both mentioned theories there are a multitude of schools of thought. The point is here not to give a comprehensive review of institutionalist theory in relation to the topic for this study but to provide a foundation for the argument of the importance of institutional dynamics for policy (both creation and implementation). The central theme in Institutionalism is the relationship between institutions and human behaviour and to describe how institutions are created and how they change (Hall and Taylor, 1996: 5). According to the Neo-Liberal scholar Keohane's 1998 article „International Institutions: Can Interdependence Work?“ IOs are important international actors. However, he disputes that they are necessarily efficient or successful (1998: 83). There is no doubt on that institutions matter among IR scholars. The debate is rather, to what extent do they matter? And, in what way are institutions significant for domestic and international politics?

According to institutionalism, the individuals that constitute the institution generate an institutional culture. The institutional culture does in turn impact on the individuals separately, the institutional culture does, hence, socialise bureaucrats into the institutional culture. This in turn impacts on the institutional culture, which evolves. This is not the place to go further in to the debate on institutionalism but rather acknowledging that they do have a significant impact on policy-making and policy implementation. Institutionalism matters to this study in how institutional culture impacts on decision-making and policy outcomes.

3.7. The Impact of IOs

This section argues that IOs are important political actors that influence international and national policy-making. In the case of South Africa, it is important to note that the outcome of this influence varies drastically before and after the transition to democracy. The financial sanctions posed on South Africa by the international community during apartheid affected South Africa's domestic policy in terms of economic sanctions and international boycotts of South African exports (Klotz, 1995).

According to institutionalist and constructivist theories of international relations (IR), IOs are important actors in terms of how policies and norms are constructed and implemented.

Checkel argues that bureaucrats working at the European Union (EU) in Brussels are „socialized“ in European norms and as a result tend to withdraw from their national normative framework (Checkel, 2005b). This is an outcome of a socialization process that takes place through the interaction with bureaucrats sent out from the member countries in the institution that the EU constitutes. The interactions and the practices in the institution of the EU create an institutional culture. The impact of IOs on norms has been explored by a number of articles by well-established scholars such as Finnemore & Sikkink (1998), Checkel (2005a; Checkel, 2005b), Klotz (1995).

In the previous section on the theoretical framework, I drew from Finnemore & Sikkink’s article on how norms are a concrete and conscious process from the idea as the source till the implementation and establishment of the norm. In this section I will elaborate further on the impact by IOs on how IOs can be seen as actors in the norm creating process.

According to Barnett and Finnemore (1999) there are two main schools of thought in organisations’ theory. One is more focused on economics and the other one is centred around issues related to legitimacy and power (Barnett & Finnemore, 1999: 702). The different stages of the norm creation process have already been outlined in the previous section but of importance to analysing the role of IOs and norms is especially the phase Checkel calls „persuasion“ (Checkel, 2005: 8). His definition of the stage called persuasion is defined as: „a social process of interaction that involves changing attitudes about cause and effect in the absence of overt coercion“ furthermore, „it is a social mechanism where the „interactions between individuals“ may lead to changes in interests or possibly identities“. (Checkel, 2005: 8). According an article by McKeever social and economic development has to a large extent shaped regional institutions in Southern Africa (2008: 453).

The importance of IO’s role in the combat of sex trafficking is mentioned by Sasken (2003). She illuminates that „NGO’s are playing an increasingly important role“ through a number of initiatives set up by international NGO’s. Sasken (2003) reinforces the argument of the complexity of trafficking in humans and globalisation.

3.8. Policy-making

In the social sciences, policy studies are primarily about the policy process, how and who makes policy and the sources of policy (Spicker, 2006: 16). Policies can be made at different levels and describes a decision or a course of action set by an authority. It can be difficult to

find the exact source for a policy and to find out how it was shaped. Nevertheless, research on policy is highly significant as it contributes to clarify the origins of policies and, according to constructivism and feminism the underlying ideas thereof.

Spicker identifies four variables within the policy: „[A] mission (or vision), Values, Aims and Goals“ (2006: 49). In the context of child trafficking for the purposes of the sale of children, child prostitution and child pornography the mission or vision of a policy regarding the subject matter is to combat child trafficking for the mentioned purposes. The values are related to contemporary norms and morality. The values can be difficult to distinguish but are used to lead the policy in a specific direction.

Aims refer to the expected achievement of the norm; it concerns the practices that need to be introduced in order to realize the policy. The goal of the policy is when the previous variables functioned accordingly and the desired outcome is achieved (Spicker, 2006).

3.9. Implementation of policy

Implementation is to put a policy, law or decision into force, hence achieve its goal. Implementation can be a political process or a policy process. In both cases implementation refers to a process realising the goal of the task for implementation through some type of administration. The latter can refer to a bureaucratic setting , or to in case of implementation as a political process „implementation can be seen as an arena where different factions, interest groups and approaches compete, deliberate and negotiate approaches“ (Spicker, 2006: 147). In this study, the implementation of policies and legislation on trafficking of children is not receiving extensive attention. An extensive evaluation of the South African policies on the subject matter, will not be possible. However, the aforementioned will in the next chapter be discussed in relation to NGOs and IOs of concern for the subject matter.

Chapter 4 - Case Study: South Africa

4.1. Introduction

This chapter primarily consists of two main parts. Firstly, this chapter aims to provide an analysis of child trafficking in South Africa by scrutinizing available reports by NGOs, IOs and the South African government. By doing so, this chapter will highlight the reality that children are being trafficked to, from and within South Africa. However, to establish the extent thereof has remained difficult to estimate. The first section will account for the existing data on child sex trafficking in South Africa. In the second part, existing legal instruments with regard to policy documents and South African policy and law will be accounted for. The second section is divided in two parts, the first overseeing national legislation on child trafficking; here the most relevant acts and policy documents will be discussed. In the second section, international law and its impact on South Africa's domestic policy regarding the subject matter will be dealt with. The most important treaties and conventions with regard to child trafficking will be presented as part of the discussion in this specific section. A number of treaties regarding crimes against women and children are of high relevance to trafficking of children. Thus, the focus will be on the component on children or on treaties exclusively focusing on children's rights. However, as will be indicated, international law and domestic law have traditionally included children in general policies on trafficking in humans. Concerning trafficking of women and children in general, there are several aspects highlighted by Sasken (2003) who holds that migration laws risk to increase the vulnerability for undocumented immigrants. For instance, in countries where prostitution is forbidden or forbidden specifically for immigrants, victims of trafficking risk to be deported from the country or be charged in the event of using false identification documents (Sasken, 2003).

4.2. Trafficking of Children in South Africa

The Molo Songololo report (Koen, van Vuuren & Anthony, 2000) on child trafficking in South Africa provides one with an indicative sense on the level of this phenomenon in South Africa. The findings in the report „Tsireledzani“ by the HSCR (Allais et al., 2010) reinforce these findings. Although discussed in chapter two, the aforementioned report warrants some reflection here. The latter was critiqued by Gould, Richter and Palmery (2010) and this mainly focused on methods of data collection and that the organization drew estimations despite the fact that they had a small number of sources. According to the critique, the

estimates relied on a too weak factual basis. This critique is certainly substantial and need to be taken into consideration. However, estimates might have been exaggerated but the fact is despite this that child sex trafficking does occur in South Africa and sometimes with children that have not even reached puberty. According to Allais et al. (2010) the underlying purpose for trafficking in humans in South Africa is predominantly the sex industry. Allais et al. accounts for cases of trafficked children with the purpose of removal of body parts as well as child labour (2010: 66). South Africa is a regional hegemon with a GDP four times greater than its neighbouring countries. This has made South Africa a migrant destination (Allais et al., 2009: 89). Migrants from Southern Africa migrate to South Africa in search for labour and in search for a better life; this is likely also a reason for why traffickers operate in the country. Allais et al. describe the perception of South Africa in the region as „the land of opportunity“ (2010: 89). The view depicting South Africa as a land of opportunity is a motivating factor for traffickers to operate in South Africa. According to the 2007 UNESCO report by Delpont, Koen and Mackay, it is estimated that 30 000 children are involved in prostitution. It should be noted that his data is based on the report by Molo Songololo (Koen, van Vuuren & Anthony, 2000) on trafficking in children. This indicates a trend on reproducing data in the academic literature as well as reports on trafficking in children. Kreston (2007) confirms that research on trafficking of children in South Africa has predominantly been conducted by the aforesaid organization. Additionally the IOM and UNICEF and the 2010 report „Tsireledzani“ has provided data on the subject matter. Tsireledzani is often sourcing and referring to the report published by Molo Songololo (Koen, van Vuuren & Anthony, 2000). Since the report by Molo Songololo (Koen, van Vuuren & Anthony, 2000) was published several other research articles and reports have been published concerning sex trafficking of children in South Africa. The most important contributions were mentioned in the literature review and are further elaborated on in this chapter. Most of the literature on sex trafficking of children is produced in the form of reports of trafficking in humans and/or sex trafficking of humans. The geographical patterns of sex trafficking are ambiguous. That said, it should be noted that sex trafficking does not exclusively affect women and children.

Allais et al. (2009: 64) asserts that a variety of factors are significant in terms of how to deal with victims of child sex trafficking. One issue of concern is translators participating at interviews with victims of trafficking when the victim does not speak any of the official languages in South Africa, especially in the case a victim has been trafficked from another

country into South Africa. Incorrect translation is not only an obstacle in the legal process but also a risk to the victim's security, should nuances of the victim's account be lost or overlooked.

According to the Molo Songololo report, the media and articles in newspapers the most important sources for information on sexual exploitation of children in South Africa (Koen, Vuuren & Anthony, 2000: 22). The authors argue that the media has an important role in terms of raising awareness. Certainly the media is important, especially in terms of creating public opinion and raising awareness. However, it is important to note that information gathering journalism differs from academic research. In the case of child trafficking research, it is thus imperative to be aware that newspaper journalism, sometimes, does not meet the requirements of academic research in terms of data collection, interview methods and sourcing. Nevertheless, newspaper articles are imperative for raising public opinion on the topic. Another important role of newspapers is the advertisement of sexual services, even though not explicitly mentioning under-aged, individuals some of the ads are according to the authors insinuating the availability of minors for sexual services (2000: 22).

The „Tsireledzani“ report (2010) has been criticized for lacking accuracy and widely exaggerating the scale of trafficking of children in South Africa (Gould, Richter & Palmery, 2010). However, Allais et al. acknowledges that measuring the scale of the subject matter is highly problematic. Regarding the scale of trafficking in children they write following: „The criminal and hidden nature of human trafficking presents many challenges to empirical research, particularly collection of accurate statistics. The lack of official systems for recording human trafficking cases further impedes compilation of the quantitative data required to make an accurate assessment of the problem in South Africa. As this is a new area of empirical research, estimates at this point would not be methodologically advisable. Hence no attempt is made here to estimate the actual size of trafficking streams into South Africa and only the major characteristics of the practice are highlighted“ (Allais et al., 2010: iv). Allais et al. identifies streams of trafficking from other African countries to South Africa as a transit country and trafficking within the country. In terms of child sex trafficking, the report by Allais et al. includes twelve children in their section on trafficking of children (2010: 86). The majority of the children in this group of respondents originated from Mozambique but the group also included children from South Africa, Zimbabwe and Swaziland, two of the children were boys and the other girls. Importantly, the report notes that: „No clear pattern was identified regarding a specific type of exploitation“ (Allais et al., 2010: 87). This is an

indicator of the argument put forward in this thesis; child trafficking cases are different in nature and so are the underlying causes. Thereby, it is important to be context specific when dealing with the crime of child sex trafficking.

In the 2007 report by Save the Children UK (Hillier), it is emphasized that one should distinguish unaccompanied child migrants and children that are trafficked. Indeed, there are essential differences although children who migrate alone are vulnerable for traffickers. The aforementioned report describes the high vulnerability of girls that migrate alone, as a means to pass the boarder some girls reportedly paid the border guards with sex. The view on young girls as capable of providing sexual services is alarming. In cases when unaccompanied girls would pass the border with the help of a truck driver, the payment is often made in the form of sex (Hillier, 2007: 15). Furthermore, the report states that some of the unaccompanied migrant girls ended up making a living in the sex industry in South Africa. Some of the facts in the 2007 Save the Children UK report (Hillier) were based on data published in 2003. The border guards accepting payment in sex by migrating girls is referring to members of the South African National Defence Force that used to man the borders of the country. This is no longer the case as the borders in contemporary South Africa are controlled by the South African Police Services. According to Hillier, these events shed light on the importance of new data on the topic.

Despite South Africa's own socio-economic problematic situation, it is regarded as a country of opportunity for people in some of the neighbouring countries, in many circumstances this is the case. The 2007 UNESCO policy paper on the situation of human trafficking, further emphasizes the vulnerability of unaccompanied child migrants (Delpont, Koen & Mackay, 2007: 11). According to the 2011 US „Trafficking in Persons Report – South Africa“ (US TIP, 2011) taxi drivers transport children migrants over the border from Zimbabwe and upon arrival some of the children are forced into prostitution. The same report establishes that children are being trafficked mainly within South Africa. Furthermore, the report states that: „Women and girls from Thailand, Cambodia, the Congo, India, Russia, Ukraine, China, Taiwan, Mozambique, and Zimbabwe are recruited for legitimate work in South Africa then subjected to prostitution, domestic servitude, and forced labour in the service sector“ (US TIP SA, 2011: 327).

The map below shows South Africa and its bordering countries. Most cases of child trafficking to and from South Africa is according to the data presented by the aforementioned 2011 United States TIP – South Africa, within the country and from and to Lesotho, Swaziland, Zimbabwe and Mozambique. According to Delpont, Koen & Mackay (2007: 24), the Western Cape of South Africa functions as a transit point for international human trafficking. The extent of international child trafficking through the Western Cape is not mentioned in the report. However, in the 2003 IOM report, sex trafficking of children from Lesotho to South Africa is accounted for.



Map 1 Map of South Africa

Source: (UNESCO 2007).

One common destination for the children from Lesotho is according to the report, Bloemfontein that is one of the larger cities close to Lesotho. Other cities mentioned in the report as destinations for child sex trafficking close by the Lesotho borders are Ladybrand, Fouriesburg and Qua – Qua (Martens, Pieczkowski & van Vuuren – Smyth, 2003: 34).

these instances white South African men residing on farms in the Free State or in the small cities close by the Lesotho border. In one of the cases indicated in the IOM report, the trafficked girl was told that she would obtain employment as a domestic worker but subsequently her „employer“ began to sexually exploit her. Other cases tell of abduction, violence and rapes by a multitude of men (Martens, Pieczkowski and van Vuuren – Smyth, 2003: 41-45).

4.4. The causes and the demand of child trafficking

If it was not for the demand of children in the sex industry, the issue of child trafficking would be non-existing. Children are being trafficked and sold for other reasons than selling sex. This is of equally high concern but would have to be researched in another study. Children in their late teenage years may as well have a higher degree of voluntariness in terms of having made a decision to migrate in order to sell sex. However, they are in an extremely vulnerable position. According to an introductory report by ECPAT Sweden, some of the sex buyers seemed to think not only that the young sex sellers were engaging in prostitution by choice and that the individual buyer would contribute positively by buying sex from them, hence, supporting the girls (in this example) financially (ECPAT Sweden). The text on child trafficking in Sweden by ECPAT indicates that the purchaser of sexual services is not always aware of his or her role in the complex chain of activities that makes it possible to buy sex (from children). The reason for this may be of negligence, ignorance and/or denial. Koen, Van Vuuren & Anthony (2000: 33) confirm this attitude among purchasers“ of sexual services from children in South Africa. One of the interviewed purchasers claimed to do no harm to the girls, in this case referring to girls in the ages of ten to twelve years old. Furthermore, the purchasers“ referred to in the aforementioned report were specifically demanding young girls or children and seemed to generally be of the idea that they were doing no harm to the children. In the cases of sex tourism, the purchasers based this on racist exoticism in terms of ideas that girls in „hot countries“ would engage in sexual activities at a young age and that incestuous relationships in families would be regarded as normal (Koen, van Vuuren & Anthony, 2000: 33). It is clear that was it not for the demand, children would not be bought, sold, trafficked and abused in the sex industry. The urge for a few to purchase sex from minors has severe consequences for the children that are brought into the industry as it entails both physical and psychological suffering for the child. In the cases of consent by the children (here a specific reference is made to children in their late teenage years) the

consent seems to be based on despair rooted in poverty. The „choice“ to agree to an offer by a trafficker is thereby, in reality, to a minimal extent based on the child’s free will.

4.4.1 Causes

There are a variety of underlying reasons for why child trafficking transpires. Poverty, gender inequalities, the occurrence of violent conflict, ethnic conflicts and/or discrimination and low educational level are all causes of trafficking (Loubser, 2009: 17). The strongest contributing factor for child sex trafficking is, however, believed to be the demand by the purchasers of the services by children in the sex industry (Loubser, 2009: 18). According to the report by Koen, van Vuuren & Anthony (2000: 27), some of the underlying causes for sexual exploitation of children are poverty, migration and exposure to domestic violence in combination with insufficient social welfare support for children and their families. Furthermore, the authors of the report stipulate that: „These causes include attitudes about girls as providers of sex to adult men“ (2000:27). Hence, the cause of sex trafficking is seemingly dependent on a variety of factors. There is reason to argue that the determining cause varies from child to child, depending on context specific circumstances such as the child’s family and social network. In October 2011, the South African internet based news channel „News 24“ reported a case of suspected child trafficking of a toddler. According to the article his grandmother sold the child to a trafficker while the mother of the child unknowingly was away from home (News24, October 2011). It was alleged that the amount the child was sold for was R500. However, in this case, the toddler was found and returned to his mother. The motives by the grandmother (which was not specified) and considering the relatively low amount the boy was sold for, compels one to assume that poverty, in this case, is likely to have been one of the causes. Jacques Pauw (in Citi Press, in News24 in April 2011), reports another severe case. The article describes what is suspected to be a child trafficking syndicate operating through a social worker that worked under false qualifications at the organization Child Welfare South Africa. Pauw sheds light on cases of child abuse in a shelter supported by the organization; staff members exposing the children to pornography and one girl was raped, which resulted in her pregnancy. This type of violence described cannot be explained by acute poverty. Although, the cases of trafficking connected to a few of the staff members would generate an extra income. Delpont, Koen and Mackay further mention cultural practices and beliefs that are reasons for the prevalence of sex trafficking in girls in South Africa (2007: 37). Early marriages where a bride price is paid to the brides’ family (lobola) can be a temporary solution for a family in poverty. „Child marriage can,

itself, lead to destitute poverty of women through divorce, separation or abandonment. Very often, the only option for girls and women in situations of extreme marital stress is to run away“ (Delpont, Koen & Mackay, 2007: 37). This creates a vulnerable situation for the girl and a risk of trafficking according to the authors of the aforementioned report.

Young girls are perceived to be more erotic than their adult counterparts in South Africa; this together with the idea that young girls are not carriers of HIV creates demand in young girls in the sex industry. Gender discriminatory norms in parts of the South African society is according to Delpont, Koen and Mackay (2007: 37) part of the reason for the demand of young girls in the sex industry in conjunction with weak implementation of policies. Girls and women that are, or have been victims of trafficking are marginalized in the South African society for a variety of reasons. In cases when someone has been trafficked from another country to South Africa, the victims of trafficking risk not only to be exposed on the street as prostitutes, but also face the threat of being discriminated against due to xenophobia. The OPSC¹⁸ outlines a number of factors as cause for the sale of children, child prostitution and child pornography that are all factors children are being trafficked for: „underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult behaviour, harmful traditional practices and armed conflicts“ (OPSC, 2002).

4.4.2 The purchasing demand and the trafficker

Not all adults that purchase sex from a child are paedophiles per se the age of the sex seller is not always possible to estimate by the buyer and children of sixteen to eighteen years of age that have been trafficked to another country, may not be able to communicate their real age due to language barriers. Buyers of sexual services from children are according to Koen, van Vuuren & Anthony (2000: 32) predominantly men and from different socio-economic layers in society. The report accounts for police officers, working class men, lawyers, doctors and taxi drivers as purchasers of sex from minors. Regardless of the fact that men in a variety of occupations and economic status are potential sex buyers it is of great importance to emphasize that this by no means insinuates that all men are potential sex buyers or potential exploiters of children. Rather, this should be an indication that potential sex buyers are represented in different layers of society but should not throw cast on men in general. This,

¹⁸ To be further discussed in the section under international law in this chapter.

should, furthermore, function to raise awareness in policymaking processes to strengthen policy-making as well as implementation of policy.

Children that are in the risk zone of trafficking are vulnerable in terms of lacking or low levels of education (lack of school attendance) and they most commonly live in poverty. While much attention is directed towards the victim¹⁹ little focus has been placed on the perpetrators of trafficking. A broadened researched focus could contribute to further comprehending the subject matter. According to Allais et al. (2010: 89) perpetrators of trafficking in South Africa are typically criminal syndicates that have a coordinating function. Initiators of trafficking are often related to the child and Allais et al. states that in some cases one of the parents have sold the child to traffickers. In other cases it was a relative that convinced the child and the parents, often with promises of a better life and education for the child. This indicates that the child, and the parents of the child, are often aware of what type of activities the child will be forced to. In other cases both the child and the parents have been acting in the belief that their agreement would lead to a good cause that would mean a better future for the child.

4.5. The trafficker

The root of the problem of child trafficking has many aspects. If it were not for the fact that minors were available in the sex industry, the problem would not exist. However, if it were not for the demand, by the purchasers of minors, the traffickers would not be engaged in creating a supply of young girls. Girls would not be available were it not for the traffickers and the traffickers are not exclusively men. On the contrary, Delpont, Koen and Mackay (2007: 26) put forward: „Human trafficking is committed by males and females of varying ages and ethnic, social and economic backgrounds, operating within varying degrees of organization.“ The most frequent purchasers of sexual services from children are men from different layers of society. However, the traffickers are often women. The act of purchasing is problematic, mainly because the physical and psychological trauma for the child but another aspect is that this additionally creates a demand of young girls and children in the sex industry. The role of the woman trafficker is according to Delpont, Koen and Mackay to employ a form of confidence by the targeted child’s parents and act as a potential „employer or intermediary“ (2007: 27). They travel from village to village where they know poor people

¹⁹ This is indeed necessary and the author is not critical of the focus on the child victim but rather wishes to emphasize the importance of broadening the perspective to include perpetrators of trafficking.

are willing to leave for employment in town, or to send their girls or boys away. The terms of the contract are rarely clear between the trafficker and the parents of the victims in case of trafficking in children. Parents only know that their child is going to work and earn money to provide for the need of the remaining members of the family in the village, without being informed on the living and working conditions of the child.

The methods used by the traffickers to recruit women and children can be abductions, clan-based recruitment, peer pressure or recruitment through newspaper ads" (Delpont, Koen & Mackay, 2007: 27). Since the traffickers inculcate, or manage to inculcate, confidence in the relationship with the child's parents, the act only becomes criminal once the child is forced in to sex work or other labour. This further complicates the identification of signs of trafficking by state officials and social workers at national borders. This is due to the fact that, on the surface, it looks as if the child accompanies the trafficker willingly. The aforementioned report distinguishes actors involved in the national, international and transnational trafficking of humans. On the national level it is a variety of actors involved. Specifically mentioned are long distance truck drivers and law enforcement officials (Delpont, Koen & Mackay, 2007: 27). On the international level and the transnational level, there are various organized criminal groups into play. The origins of criminal groups and mafia in charge of trafficking in humans mentioned in the report are Russia, Bulgaria, Brazil, Nigeria, China and Europe (2007:27). Research on the actors is a dangerous undertaking; it is difficult and not likely to be successful due to the actors' interest in remaining anonymous.

Despite the recent year's additional reports on trafficking of women and children in South Africa, the number of reports is relatively few and the new information put forward limited. Pharoah acknowledges this problem in her article on human trafficking (2006). According to Pharoah: "[O]nly a few studies have examined trafficking in Southern Africa, and references to the problem in South Africa draw on the experiences of a small number of support organisations, media reports and a handful of studies – most of which have focused on the trafficking of women and children for sexual exploitation. These provide an indication of possible trends and issues, but are insufficient data for policy design" (2006: 23).

The 2011 United States report on Trafficking in Persons (US TIP) depicts the context of trafficking in persons in the case of South Africa as problematic and as an issue that needs to be further comprehended in policy-making (US TIP, 2011: 327). According to the report it is:

„The lack of a comprehensive law that fully defines trafficking, empowers police and prosecutors, and outlines provisions and allocates funding for victim care is the greatest hindrance to anti-trafficking efforts in South Africa US TIP, 2011: 328). The organized crime syndicates operate within South Africa as well as internationally. However, sex child trafficking may as well occur in a small context, where the trafficker is for instance a taxi and/or truck driver see an opportunity of taking advantage of children travelling alone. In these cases the drivers might not have planned the action of trafficking a child for either farm labour or sex work, but the act of trafficking occurs as an opportunity arises along the route. However, in cases where a truck or taxi driver has functioned as a trafficker, the driver's contacts at the place of destination has been crucial for how the child ended up in forced labour or in the sex industry.

4.6. Sex tourism in South Africa

One of the pull factors of trafficking in humans is „sex tourism and industry“ (Delpont, Koen & Mackay, 2007: 38). According to a research paper published in 2005, children were observed working with prostitution at brothels of the less „visible“ type. Organised networks with pimps, hotel staff, escort agencies and taxi drivers were mentioned as coordinators of child prostitution or contact intermediaries (O'Connell Davidson & Sanchez Taylor, 1996: 8). The aforementioned study is one of few studies including interviews by sex tourists and buyers of sex from children. According to O'Connell Davidson and Sanchez Taylor, they did not find much evidence in 1995 that sex tourism was especially directed towards children but rather that many men that bought sex would be indifferent to if the girl was in her mid-teenage years or a young (adult) woman. The authors did find signs on that European paedophiles were exploiting some of the street children but did not encounter any concrete evidence of this (1996: 18-19). The authors of the study pose heavy critique towards the then „new“ South African society and the traces of the apartheid regime that according to them were visible also in the sex industry. Thus, it is indisputable that the sex industry was and likely still is marked by segregation and racial preferences, which is emphasised by the authors, however, this is likely not unique in the case of South Africa.

4.7. Part Two: National and International policy on trafficking in children

The first part of this chapter contextualized child sex trafficking in South Africa. The second part of this chapter will present the legal instruments in terms of laws and policies on the

subject matter. It has been argued that it is intrinsically difficult to create policies regarding trafficking in humans due to the vague concept of trafficking and the previously mentioned difficulties in data collection and statistics (Pharoah, 2006: 11). The issue of human trafficking is complex and policy needs to be specific in order to come to terms with the problem. The literature on child sex trafficking in South Africa consists mainly on data of inter-regional trafficking patterns. The most common form of child sex trafficking in the case of South Africa seems to be within the country and from the neighbouring countries. A comprehensive legislative framework in the domestic context of South Africa, is not only going to strengthen the possibilities to prosecute traffickers but also to create societal norms against trafficking in humans. The criminalisation of the act of trafficking in humans is likely to raise social awareness of the implications of the crime.

This section will first present the South African national legal framework regarding sex trafficking of children. Secondly, international law on the subject matter will be discussed and its impact on national policy-making will be elaborated on.

According to the authors on 2010 trafficking report Tsireledzani, the concept of policy is a loose term in the South African context. „Its meaning can range from a general „principle approach“ adopted in respect of a particular issue to a detailed set of directives that must be observed by officials“ (Allais et al., 2010: 48). For the purpose of the following sections it is hence, noted that policy documents will be accounted for, in terms of government Bills, government Acts and national recommendations and directions on how to deal with the subject matter.

4.8. National South African Policy on Trafficking of Children

There is no policy framework that fully covers trafficking of children in South Africa. This is due to the lack of a comprehensive legal framework on the subject matter. The literature indicates that the lack of a specific and comprehensive national law on child trafficking may be a hinder of combating the problem (Kruger, 2010: 294). However, there are laws in place to prosecute traffickers and policies in place to support victims of trafficking. Furthermore, a comprehensive legislation and policy framework is in the process of being shaped. Trafficking of children is a deeply concerning matter and it is imperative to have efficient policies in place. According to Pharoah (2006: 1) South African domestic legislation on trafficking has undergone a long process of taking shape. A number of reports and

observations by the media have fuelled the political interest to create policies aiming to combat trafficking in humans. In July 2011 the Mozambican resident dos Santos, was convicted for trafficking in humans. This was a result of the strengthened national legislation on the subject matter (South African National Prosecuting Authority, media statement, 2011). This was the first convict of trafficking in humans in South Africa through the Children's Act 38 of 2005. Following, an overview of national legislation and policy in South Africa will be accounted for. Even though there is not yet specific legislation in place on trafficking in children, the crime is included in the aforementioned Act. There are furthermore, a number of polices that can be applied on cases of trafficking of children, outlined by the 2011 US Trafficking in Persons (TIP) report. Previous to the 2007 Sexual Offences Act came into force, the 1998 Prevention of Organized Crime Act would be used to prosecute child traffickers (US TIP, 2011: 328).

4.9. Criminal Law (sexual offences and related matters) Amendment Act 32 of 2007

Trafficking of humans is included in many of the articles in the Criminal Law (sexual offences and related matters) Amendment Act 32 of 2007 (henceforth referred to as the Sexual Offences Amendment Act). This Act is one of the legal tools in the combat of trafficking in humans in South Africa. According to section 71 in the Sexual Offences Amendment Act, a person found guilty of trafficking in persons may be convicted to life imprisonment.

4.10. Children's Act 38 of 2005

Criminalisation of trafficking of children under the Children's Act 38 of 2005 came into effect on 1 April 2010. An investigation by the South African Law Reform Commission (SALRC) found that even though there was domestic legislation that could be used on cases of child trafficking, there was no law in place that specifically treated the subject matter. Children's Rights organizations contributed to raising awareness regarding the subject matter and SALRC deemed it necessary to include more specific legislation for trafficking of children in the Children's Bill. Another important reason for the SALRC to call for such changes was the international treaty of Trafficking in Persons Protocol that South Africa had signed, which obliged the country to specify its current legislation on trafficking in humans (Allais et al., 2010: 41).

4.11. Prevention and Combating of Trafficking in Person's Bill

The Prevention and Combating of Trafficking in Persons Bill (henceforth referred to as „the Bill“) was presented for parliament in 2010. The Bill was published in January 2010 and is under drafting and editing by the Department of Justice and Constitutional Development (DoJCD). By the time this study is being finalized (Mid October 2011) the Trafficking in Persons Bill was still under drafting and editing.

In the preamble of the Bill a special concern of women and children regarding trafficking of humans is expressed. The authoring of the Bill is drawing on international law on human trafficking and refers specifically to the UN treaty; „Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organised Crime, 2000“. Even though the current domestic legislation does not fully cover the complex problems with human trafficking and trafficking of children specifically, the Bill that is under drafting will provide comprehensive legislation on the subject matter.

4.12. Prevention of Organized Crime Act 1989

According to the Prevention of Organized Crime Act 1989 racketeer and acts related to this are criminalized. Rape, kidnapping and indecent assault fall under this act and can be used to prosecute some cases of child trafficking.

4.13. Initiatives to combat trafficking, South African institutions and organizations

The aim with this section is to provide information on different actors involved in the combat of trafficking of humans in South Africa. Hence, there are actors that are not mentioned here that are important too but have been left as the aim is to provide an overview. The Women's Parliament functions as a platform with the purpose to illuminate gender inequalities in South Africa. Women's Parliament started as a one day event in 2004 to celebrate ten years of democracy. The outcome was an annually reoccurring event. During aforementioned event Parliament found that women still face a broad spectrum of inequalities based on their gender. The Women's Parliament functions as one mechanism for the Parliament to combat discrimination based on gender and to create a „cohesive, non-racial, non- sexist democratic society“ (Levendale, 2008: 2-3). The 2006 report by the Women's Parliament, specifically addresses trafficking of women and children, the theme for 2006 event was that of

„Protecting the Rights of Women and the Girl Child: Combating the Trafficking of Women and Girl Children“. Several aspects of trafficking in the South African contexts are raised in this report. This has previously been described in the first section of this chapter. The report stresses the importance of legislation as instrumental to combat human trafficking and that of the media in terms spreading information and raising awareness on the subject matter. Regarding prevention, protection and prosecution the Women’s Parliament stresses the importance of that South African’s adopt a „zero-tolerance towards trafficking“ (Women’s Parliament, 2006: 4). International cooperation is according to the speaker of the 2006 Women’s Parliament, imperative to come up with efficient measures against trafficking. Furthermore, the aforementioned highlighted that: „[T]rafficking is the third most lucrative international crime and US\$7 billion exchanges hands through this type of crime. Organised crime syndicates run the international crime scene and they are intent on making a profit“ (Women’s Parliament, 2006: 7).

Molo Songolo is a NGO working for children’s rights in South Africa. The organisation has contributed extensively to the information and to raising awareness on the context of child trafficking in South Africa through research projects and campaigns (Koen, van Vuuren & Anhony, 2000). Another governmental institution of relevance to exemplify actors involved in the work against trafficking in humans is additionally the Department of Justice and Constitutional Development (DoJCD) that through the legislation directorate is responsible for the processing of the „Prevention and combating of trafficking in persons bill“ (2010).

The by the South African government initiated research project that resulted in the report „Tsireledzani“ is a further example of domestic institutionalised projects on the subject matter. The National Prosecuting Authority of South Africa commissioned the report and the research was conducted by the Human Sciences Research Council (HSRC) (Allais et al. 2010). In the aftermath of the research report a one week long campaign has been organised in order to raise further awareness. The „[H]uman Trafficking Awareness Week in October 2011 included a broad spectrum of events in different media channels and events to inform the public of the atrocities of trafficking in humans (The Republic of South Africa Government website, 2011).

4.14. International law regarding trafficking of children

The first international convention on trafficking in humans was established in 1904, International Agreement for the Suppression of White Slave Traffic. This was the result of the first international reaction to combat trafficking in human beings and was a reaction to the reports on how the sex industry was trading with women. Subsequently the protocols of: „Convention for the Suppression of the White Slave Traffic of 1910; Convention for the Suppression of Traffic in Women and Children of 1921; Convention for the Suppression of the Circulation of, and Traffic in, Obscene Publications of 1923 were entered into force. The result of the raised international awareness and the aforementioned international treaties was embodied in the 1949 „Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others“. For decades to follow, this remained the international standard setting convention on the subject matter. The international focus on trafficking in humans increased again in the 1980s and in the 1990s. At the same time the international community raised its concern over organised criminal groups operating across borders. This led to new international and national measures in order to prevent international crime (Allais et al., 2010: 19). Since trafficking in humans is closely connected with organised crime and international crime syndicates, these two developments were imperative for the shaping of international law concerning sex trafficking of children.

4.15. The Palermo Protocol

As a result of this, the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime came into force (henceforth referred to as the Palermo Protocol). The Palermo Protocol was signed by South Africa in year 2000 and was ratified by the same in year 2004 and has functioned as a standard setting instrument for the countries that signed and ratified the treaty. Prior to the adoption of the Palermo Protocol a discussion on the definition of trafficking for sexual purposes took place. One side took the stance of abolitionist feminists, arguing that all prostitution should be conceived as trafficking regardless of, or if, prostitution took place voluntarily by adult women and selling sex were legal according to some states domestic policy. Despite that this is a field of grey zones, the majority of the decision-making delegates were of the opinion that domestic law must be respected. Hence in countries that have a domestic legislation allowing prostitution, it is important to protect the women that have been forced into prostitution and/or trafficked and

sold into the sex industry. Children can in this matter, as previously emphasized, not be included in the discussion of voluntary sex workers. However, the discussion on how the Palermo Protocol should be formulated resulted in that some of the terms are undefined in order to suit the majority of the states that were to sign the treaty (Allais et al., 2010: 20).

4.16. Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) was adopted by the UN in 1989 and entered into force in 1990. South Africa ratified the CRC in 1995. The CRC stipulate states to protect children from all forms of abuse and many of the articles are of direct relevance regarding child trafficking. Paragraph 1 and 2 under Article 19 refer specifically to states' responsibilities in terms of national legislation:

„1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement“ (CRC 1989). Article 32 urges for the child's right to be protected from economic exploitation and additionally to be protected „from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development“. In Article 35 it is specifically stipulated that states are obliged to protect children from trafficking: „States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form“. As noted by Allais et al. (2010, 27) the CRC does not successfully clarify what the sanctions against the crime of trafficking in children should be.

4.17. The Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography 2002

The CRC has been critiqued for not having been sufficiently adhered to by the member states (Tiefenbrun, 2007: 33). Even though the CRC accordingly, as discussed above, does include measures against trafficking of children, this has been poorly implemented. As a result thereof the OPSC was adopted and entered into force in 2002. As mentioned in chapter one, South Africa ratified the OPSC in 2003 without signing it prior to the ratification. Without specifically mentioning trafficking in its articles on children, the OPSC includes this aspect since the three variables in the protocol are likely to include children that have been trafficked or are going to be trafficked. The preamble furthermore expresses that the OPSC has been formulated out of the concern for increased international traffic of children for the three variables of sale of children, child prostitutions and child pornography. The sale of children and child prostitution are of extra relevance in terms of child trafficking for sexual exploitation. The preamble of the OPSC states that:

„[C]onsidering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic of children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography” (OPSC, 2002). The factors of concern are, as illuminated by this chapter, relevant in terms of child trafficking in the case of South Africa as well as in the international context. Additionally, the OPSC call for an internationally holistic approach to come to terms with the subject matter.

Horn illuminates that the OPSC does not include a definition of child trafficking but provides a definition for the sale of children, which is one of the ways in which a child can be trafficked (Horn, 2009: 32). The OPSC is an improvement of the CRC that aims at covering gaps in the aforementioned and to further strengthen its impact. South Africa’s ratification of

the OPSC further obliges the country to fulfil the legislative requirements set out in the convention to combat sexual exploitation of children.

4.18. The impact of International Law on domestic policy

Many of the international treaties concerning trafficking in humans and trafficking in children include articles that are similar in meaning. Despite this it has been necessary to continuously develop existing international law in order to comprehend the contemporary world and by the criminal networks new found methods of child exploitation. One example is the explosive effect of internet usage that has facilitated the distribution of pornography and hence, child pornography. In order to combat new refined ways of child exploitation, international and domestic law needs to evolve to cover illicit activities. Additionally, international treaties functions as a reminder, holding states accountable for crimes against children committed on their territory.

According to the South African constitution of 1996, an „act of incorporation“ is needed for international law to become domestic law (Allais et al. 2010: 39). However, the interpretation can be of ambiguity since the 1996 constitution also recognises international law as domestic law (*see* Constitution of South Africa, Section 231 and 232 as referred to by Allais et al. 2010: 39). Reportedly this has been of concern in the implementation process of the Palermo Protocol in South Africa since international law in this case not yet has been fully realised in national legislation. International law has directly and indirectly contributed to the shaping of policies concerning child trafficking in South Africa. International law on trafficking in children is furthermore a guideline in the process of creating a comprehensive policy framework. International „best practises“ on the subject matter is according to Allais et al. (2010: 51) imperative for creating such directives. One important factor illuminated in the aforementioned report is that through more training of civil servants, the implementation of existing policy on trafficking in children will improve (2010: 51).

Factors that complicate the creation of a comprehensive legislation and policy framework is the lack of national statistics on trafficking in humans. Statistics on trafficking in children can, however, in theory be collected from April 1 2010 when anti-trafficking provisions in the Children’s Act came into force (Kruger, 2010: 404). This is according to Kruger, „provided that the official database captures such data and that it is made public“ (Kruger, 2010: 404).

According to Article 5 in the Palermo Protocol, states must introduce domestic legislation that criminalises trafficking in humans. Article 6 in the Palermo Protocol stipulates the necessity for states to provide protection and rehabilitation for victims of trafficking. Regarding the prevention of human trafficking, it is specified in Article 9 in the Palermo Protocol that „1. States Parties shall establish comprehensive policies, programmes and other measures: (a) To prevent and combat trafficking in persons; and (b) To protect victims of trafficking in persons, especially women and children, from revictimisation. Other preventive measures to be undertaken by the individual states are according to the same article to create public awareness through media campaigns.

Together with the Palermo Protocol the OPSC advocate states to cooperate in order to combat trafficking. International and transnational cooperation is essential due to the nature of trafficking being an issue of domestic, international and transnational dimensions. Hence, the legal framework needs to operate over the same state borders as the criminal syndicates of human traffickers do. Kruger (2010: 348) outlines examples of cooperation on the international level, information exchange, extradition of the trafficker to where he/she committed the crime. In the case of extradition it is important to note that the person in charge of a trafficking operation may not be the person that performs the physical act of trafficking a person. This may be coordinated from a third country. It is therefore imperative that countries cooperate in order to track down traffickers and subsequently have a system of prosecuting the individuals involved. „Mutual legal assistance“ is subsequently mentioned by Kruger (2010: 352) as a means of state cooperation and complementary to the two previously mentioned tools in state cooperation to combat human trafficking.

Trafficking of children for the purpose of selling sex is a complex set of dynamic mechanisms. The existing literature on the topic may not succeed in fully grasping the extent of the problem, however, it does show that it is a both complicated and sensitive subject. Culturally sensitive researchers with language skills are needed in order to correctly interpret data and to conduct reliable interviews without missing out nuances of the children`s narratives. This demands an extensive amount of time and financial resources that might not be available for academics, nor for researchers connected to government institutions or IOs.

Raising public awareness through the media is included and explicitly formulated in the international conventions and treaties on childrens` rights in various ways. The CRC recognises that the media has important functions in society and Article 17 outlines how the

media can benefit children's development in a multitude of ways such as adapting information to the child's context (CRC, 2002 Article 17). The preamble of the OPSC accordingly emphasises the importance of raising public awareness in order to decrease the demand for children in the sex industry.

Chapter 5 Analysis and Conclusion

5.1. Introduction

According to an estimation by Al Jazeera there are 1.4 million „sex slaves“ in the world today. This estimation includes women, men and according to the article, thousands of children whereof some are victims of trafficking (Al Jazeera, 2011).

This study has illuminated that specific numbers on victims of child trafficking is difficult to obtain. In the case of South Africa, research and policy suggestions have been based on estimations of the number of trafficked each year. Even though the policy framework concerning trafficking of children is still opaque, there are institutions in place and policies under construction for a comprehensive approach to the subject matter.

According to the theoretical framework for this study, ideas, identities and norms are imperative for law and policy development. This chapter will provide an analytical discussion with the theoretical framework applied to the findings with regard to the legislative development on the subject matter. Lastly a concluding section will sum up this study with suggestions for future research.

5.2. Findings and analysis

South African domestic legislation on trafficking in humans (trafficking in children included) is in a developmental stage and in the process of adhering to international law on the subject matter.

The number of studies done on child sex trafficking globally is vast. The problem is recognized in the international community, by a number of IOs, NGOs and by policy makers nationally and internationally. The normative aspect of child sex trafficking is indisputable, it is a crime that cannot be justified. The argument emphasized in this study revolves around ideas, identity, norms and culture as factors that not only impact in the subject matter, but furthermore the aforementioned are variables that when used as analytical tools, can contribute to comprehending the issue of child sex trafficking.

The lack of quantitative data and statistics regarding trafficking of children is problematic. This is not specifically unique for the case of South Africa and child trafficking, but tend to be a general problem concerning research on trafficking in humans. It was mentioned in the previous chapter that in theory, it is possible to collect more specific data on child trafficking

due to the addition of article 141(1) (c) in the Child Act 2005 that was passed in April 2010. In the data studied for this thesis, it has been noted that in the reports, articles and studies used numbers are vague, varying and not comprehending the subject matter. The same numbers are often referred to in new studies on the topic which seem to result in a circle production of new research that rely on old and incomplete statistics. However, the gravity of the crime of trafficking of children is undisputed. Previous studies have stated that the numbers are likely to be heavily exaggerated and the lack of accurate data alarming (Loubser, 2009: 78, Gould, Richter & Palmery, 2010). Considering the data presented in this study, the number of children that are trafficked is an ambiguous estimate. However, the quantitative as well as the qualitative data that exists must be reacted on. The slow law enforcement mechanisms and incomprehensive implementations of existing legislation are distressing, regardless of the estimated numbers of sex trafficking of children is exaggerated or not.

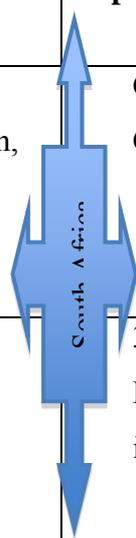
The influence of international law on national law in South Africa is clear and explicit in the constitution of South Africa (henceforth the constitution). Section 39 (1) b in the constitution states that international law must be considered. Section 39 (1) c in the constitution states that foreign law may be considered.

The model used in the theoretical chapter in order to describe the upcoming of norms will subsequently be used to depict the norm development regarding the combat of child trafficking in South Africa. Since the influence is explicit in the constitution, the model aims to demonstrate the current norm development and not support the theory per se. The theoretical stance in this subject matter is that ideas, identity and norms matter in policy development, and the relevance of this matter lies in illuminating how this is taking place in the case of South Africa.

South Africa is currently between stage two and three of the model by Sikkink and Finnemore (1998), which is the „internalization“ phase of norm evolution. Following the model discussed in chapter three will function to provide an analysis of the different phases in norm development. South Africa“s position in the model is further discussed in relation to the evolution of norms.

Table 2 Norm progression

	Stage 1 <u>Norm emergence</u>	Stage 2 <u>Norm cascade</u>	Stage 3 <u>Internalization</u>
<u>Actors</u>	A1) Norm entrepreneurs with organizational platforms. Example: Nelson Mandela (general), Desmond Tutu (general). The UN (specific in terms of the authoring of treaties regarding child trafficking).	B1) States, international organizations, networks. Example: The ANC²⁰, Molo Songololo, Women’s Parliament.	C1) Law, professions, bureaucracy. Example Children’s Act 38 of 2005, Criminal Law (Sexual Offences and related matters) Amendment Act 32 of 2007. (Not yet passed: Prevention and combating of trafficking in persons’ bill).
<u>Motives</u>	A2) Altruism, empathy, ideational, commitment.	B2) Legitimacy, reputation, esteem.	C2) Conformity
<u>Dominant mechanisms</u>	A3) Persuasion.	B3) Socialisation, institutionalisation, demonstration.	C3) Habit, institutionalisation.



(Model by Finnemore & Sikkink, 1998: 898, findings for this study added).

Explanatory text referring to the model presented above: *South Africa is in progress to create legislation specifically to combat child trafficking but the legislative framework is not yet comprehensive. In the model of norm development South Africa is placed between stage two and stage three. South Africa is in the process of developing legislation and has institutions*

²⁰ African National Congress (ANC).

in place to deal with the subject matter although the current state of the matter is incomprehensive.

A1 Actors. *Norm entrepreneurs with organizational platforms.*

The UN initiated this phase that in the case of child trafficking, policy functions as the norm entrepreneur and organizational platform. However, it is important to note that in order for international norms to win impact internationally as well as nationally, it is imperative that institutions are created on the domestic level. These institutions will subsequently through campaigns, research and policy-making raise awareness and spread the norm.

A2 Motives. *Altruism, empathy, ideational, commitment.*

The motives to create comprehensive policies to combat child trafficking are based on beliefs in that children need to be further protected. How the policies are constructed stem from the normative approach on the subject matter that is held by the policy maker.

A3 Dominant mechanisms. *Persuasion.*

The persuasion is essential for the phase of norm emergence. This means that the norm entrepreneurs (in this case the UN) need to convince the so called „norm leaders“ to accept new norms. Hence, the role of the UN would be to formulate the treaty or the treaties concerning (for this case) the rights of the child in such a way that as many states as possible would choose to sign and ratify the treaties in question.

B1 Actors. *States, international organisations, networks.*

The UN is one of the actors in the stage of the norm cascade. However, on the domestic level, the South African government, domestic institutions and NGO's are the actors where the norm cascade takes place.

B2 Motives. *Legitimacy, reputation, esteem.*

The motives of legitimacy, reputation and esteem applies both in the international context and on the national level. South Africa is bound by its constitution to adhere to international law, but regardless of a state's constitution it is in most states interest to have international recognition.

B3 Dominant mechanisms. *Socialisation, institutionalisation, demonstration.*

The dominant mechanisms in the phase of „norm cascade“ are that of by using a method of socializations, norms become institutionalised.

In the phase of the „norm cascade“, the actors, motives and dominant mechanisms work towards a normalisation of the norm. The need to add optional protocols and new treaties to children’s rights can be interpreted such as the phase of the norm cascade needed to be reinforced or had not been successfully socialized. Hence, a new treaty can be added in order for states, institutions and societies to embrace the norm in question.

In the domestic context of South Africa, one can argue that due to the ratification of both the CRC and the OPSC, the country has worked through phase one of the „norm emergence“. The country has furthermore reached the second phase of the „norm cascade“ in terms of having started (due to ratification) the socialization, institutionalisation and demonstrating of policies regarding child trafficking. The role of the women’s parliament, government initiatives and the NGO’s Molo Songololo was illuminated in chapter four. Through research, improvement of legislation, the development of new legislation and campaigns, the initiatives by these institutions place South Africa between stage 2 and stage 3 in the norm evolution model drawn above. As the next stage will illuminate further, domestic law is not yet comprehensive on the subject matter. However, this phase serve to receive international recognition and legitimacy and is important regarding the subsequent establishment of the norm.

C1 Actors. *Law, professions, bureaucracy.*

The international law in the case of child trafficking is in place. However, the enforcement of this is merely through guidelines and recommendations on how states must provide sufficient laws. On the domestic level, this stage is under construction and on its way to realisation. Through the additional changes made in the Children’s Act of 2005 under Article 141 (1) (c), trafficking of children is now a crime that can be prosecuted in terms of the definition of trafficking in children. However, the legislative framework on child trafficking is not complete in South Africa and the „Prevention and Combating of Trafficking in Persons Bill“ is being processed. It is certain that trafficking of children is frowned upon and by no means legitimate in any form by the international community as well as by states globally. States have to a varying degree managed to construct efficient anti-trafficking machinery and in the case of South Africa, a policy framework with institutions that are connected is taking shape. NGO’s working for children’s rights have as previously mentioned played an active part in creating awareness of the urgency of comprehensive law in place to combat child trafficking.

C2 Motives. *Conformity*

The motive for the stage of internalization is conformity. When a norm, through treaties, policies and laws has won impact the norm has become widely accepted. It is established by legislation, institutions and habits. This overlaps with the dominant mechanism for the internalization phase, that is habit and institutionalisation.

C3 Dominant mechanisms. *Habit, institutionalisation*

The stage of internalization in norm evolution may be somewhat indirect. People's attitudes may change due to information through campaigns and changes in the law. It is likely that people that have not been directly affected by child trafficking, know more about the reality of child trafficking in contemporary South Africa than prior to the signing of the international treaties and the information initiatives by the South African government and NGO's.

South Africa has a long history of norm entrepreneurship. Examples of individuals as norm entrepreneurs in South Africa are Nelson Mandela and Desmond Tutu. The political organization, the African National Congress (ANC), functioned as a platform to spread their ideas against the apartheid regime in South Africa. The transition to democracy meant a manifestation of the norms initiated by Mandela²¹ and were embodied in the new legislation that came into force after the transition to democracy, which forbid race and gender discrimination. Thus, in the case of child trafficking, the UN has functioned as a norm entrepreneur but also as an organizational platform aiming to establish norms and treaties regarding child trafficking.

The different stages of norm evolution are all important in terms of understanding how domestic law on child trafficking is being shaped. With regard to the third phase, this is of extra relevance to the implementation of laws and policies by government staff, social workers and bureaucrats representing the legal system. Their interpretation is essential for how policies are being carried out.

This study has not discussed implementation to a large extent due to the lack of studies on how policies of child trafficking in South Africa are being interpreted and carried out. It has been mentioned earlier in this study that the legal framework on the subject matter is not yet

²¹ Nelson Mandela was not the only norm entrepreneur in the ANC but is here utilized to amplify the evolution of norms.

in place in South Africa, hence, it has not been possible to extensively research the attitudes and the practices from an implementation perspective, of individuals working with victims in one way or another.

In chapter four it was mentioned that children that were being trafficked over land to South Africa often had to cross the border of Mozambique or Zimbabwe and some taxi drivers would exploit the situation and traffic the child into South Africa. As the legal framework together with institutions develop strategies for how to combat child trafficking, it will gradually become easier for police officers and border guards to identify situations when a child is trafficked.

5.3. The impact of international law through the lens of the theoretical framework of constructivism and critique

Constructivism and to some extent institutionalism, creates a theoretical framework for understanding how the legislative framework on child trafficking has been and is being developed in contemporary South Africa. According to constructivism, ideas, identity and norms are fundamental factors in politics. As illuminated in the previous section, these variables are essential and directly linked to international and to national law. Hence, from a constructivist theoretical perspective, the development of national policy on child trafficking in South Africa is evident. Considering the findings of this thesis in terms of norm evolution and the development of norms regarding child trafficking it is legitimate to critically reflect over the manifestation of norms embodied in legislation.

The assumption in this study has been in line with the norm evolution model by Finnemore and Sikkink (1998). However, considering that the legislation process on the subject matter in South Africa has followed a slow process one can question the effectiveness of the influence of international law over domestic law in this case. The treaties ratified by South Africa that are relevant for the combat of child trafficking, has not yet been entirely fulfilled. Hence, a counter argument to the model theorized upon in this study is that international norms have had little or weak impact on domestic law in this specific case. One can argue that, in accordance with other human rights, South Africa would have the interest to create legislation in order to combat child trafficking regardless of if the country had ratified treaties on the subject matter. However, such counter arguments remain speculative. Constructivism

functions to comprehend and explain societal and political events through a normative approach based on identity, ideas and norms.

The core of the theoretical framework for this study is constructivist, however, elements of institutionalism and organizational theory have contributed to a broader meaning of the development of norms. Hence, a mixed theoretical approach has been used in order to answer the research question for this thesis: *What is the role of non-governmental institutions and International Organizations with regard to international and domestic norms and policies concerning trafficking of children with the purpose of sexual exploitation in South Africa?*

The study has illuminated the dominant mechanisms in norm development concerning the subject matter. Furthermore, the roles of NGOs and IOs have been and are imperative for the norm development on the international level as well as on the national level in South Africa. This study has illuminated the direct influence of treaties of international law on South African national law. Additionally, subtle norm shaping mechanisms have been discussed in terms of the last stages of a norm developing process, of what is considered the „normal“. National policies on child trafficking are explicitly linked to the treaties discussed, thus it can be established that South Africa is in the process of entering the third phase of norm development on child trafficking.

The answer to the sub-question for this thesis: *What actors are responsible for the trafficking of children for sexual exploitation?* is embedded in the literature review and in the case study of South Africa and will subsequently be further discussed. The criminal networks and individuals that engage with sex trafficking of children create an informal structure to uphold a systematic exploitation of children. This area needs to be further researched as a number of factors need to be taken into consideration in order to comprehend actors connected to exploitation of children. In the case of South Africa it was found that organised crime operating both within South Africa and internationally as well as individuals with ties or contacts in criminal networks are the perpetrators of trafficking of children. The person that commits the act of the trafficking are in some cases a taxi driver, other cases referred to a relative of the child. Hence, the role of the criminal networks is to coordinate the trafficking of children. The triggering factors of child trafficking discussed in the case study under „causes“ and as illuminated by the OPSC, poverty, gender discrimination, lack of education and irresponsible adult sexual behaviour are factors that contribute to upholding practices that discriminate children and deprive them of their fundamental human rights to develop their

full potential as human beings. In order to come to terms with the issues related to trafficking of children, it is thus of utmost importance to approach the issue with a multifaceted framework of legislation and policy that not only hits toward the act of trafficking but that is deep-rooted, recognising the underlying causes and to the extent possible work with the acts and practices that uphold behaviours that are damaging for children's physical and psychological health. However, the aspect of organised crime is imperative for the subject matter and is a lucrative business but difficult and dangerous to investigate.

5.4. Conclusion

There is a lack of updated data on child sex trafficking in the case of South Africa. Estimates are rough and data collecting methods need to be refined. For instance, interviews with victims of trafficking should take place in the child's mother tongue in order to secure the information provided by the child and avoid misunderstandings.

The scope of trafficking of children remains unclear. The data that lays the foundation for this study use the same sources. There are few studies on the subject matter. New, updated data is lacking, which is problematic as research on child trafficking need to rely on up to date data.

In terms of the demand versus supply, the solution to the issue of sex trafficking of children raises a number of questions. If it were not for the demand of children in the sex industry, certainly it would not be lucrative for traffickers and pimps to find and exploit children. On the other hand, the availability may to some extent create a demand; some of the interviews accounted for in the previous chapter for instance argued that they did not care specifically how old the sex seller would be. However, the strategy should be one of approaching the subject matter with policies that efficiently makes the purchasing of sex from children intrinsically difficult. Additionally, the role of the trafficker should be made impossible and uncomfortable to carry out.

The underlying causes of child trafficking, those of poverty and unequal gender roles are important factors to combat that impact on child trafficking. However, while it is not possible to eradicate poverty in the near future, it is important to aim at some of its consequences, whereof some severely influence children. Some of the consequences are severe forms of child labour due to poverty, parents or relatives involved in the traffic of a child may for instance sacrifice one child in order to feed the other children in the family.

Policy on sex trafficking in humans is often combining women's and children's rights. Although this has a purpose since women and children in certain contexts are vulnerable and face similar risks, sex trafficking of children needs its own specific legislation. This is imperative in order to avoid confusion of the legal rights of the child. It is also important in order to provide clear directives for social workers, police staff, hospital staff, border guards and other officials that are probable encounters of trafficked children.

With regard to prostitution of adult women, civil servants need another plan of action to support women that are suspected to having been trafficked. The level of consent among adult women in the sex industry is higher but due to the exposed position of a sex worker, prostitution similar to other sex work need to be controlled and regulated. Due to the discussion of agency²² depicted in the theoretical framework, there is reason to argue that legislation concerning child victims and women victims of sex trafficking should to some extent be separated. To clarify this argument, adult women that work in the sex industry may engage in these activities to a more or less voluntary extent. The moral question on whether some women willingly work in the sex industry or are victims under the circumstances, need to be discussed in its own context.

Concerning children that have been sex trafficked or are found to work in the sex industry, it is important to create policies filling the societal responsibility that have been neglected by the adults surrounding the child. The adults surrounding the child in the sex industry are often the traffickers or the pimps that make sure that the child is profitable for them. In cases where the child's family knowingly send the minor with a trafficker, and knowing that the child will end up in the sex industry, the policies hence must empower other agents to fulfil the societal responsibility the family failed to. This means that institutions must have the capacities to act according to the policies in question. A concrete example is compulsory training for police staff, social workers and medical staff in clinics. This is to some extent taking place in South Africa but due to the reports discussed of border guards facilitating trafficking of children, some of the implementation stages need to be improved and strengthened. Families may not know where the child ended up and in these instances it is, thus, imperative that policies can be sufficient tools for social workers to help the child adequately.

²² It is here referred to the feminist debate in academia between those who propagate for that prostitutions should be legal and regulated and those who are for criminalization of prostitution.

According to the CRC's article 1, a child is every human being below the age of eighteen. This is the case, according to the CRC article 1, with the exception of „under the law applicable to the child, majority is attained earlier“. Some of the literature discussed in this study, accounts for the fact that pimps and purchasers of sexual services have a „sexualized“ view on children. Certain events with the root in, to some extent, cultural beliefs or misunderstandings, are contributing factors to the demand of under-aged girls in some brothels. In relation to this, as discussed in the literature review, cases of baby rapes were mentioned. Some of the perpetrators in these cases believed that it could cure HIV/AIDS or have a healing effect, but this believe was not present among all of the perpetrators , but a small percentage.

Another article mentioned in the literature review discussed that in fractions of some of the tribes in South Africa until very recently practiced a tradition of forcing girls as young as the age of twelve to marry older men in their tribe. Too big generalizations should not be drawn from this. However, these are certainly norms and/or practices in parts of the South African society that clashes with international norms on children. To clarify, the latter tradition mentioned of early marriages for girls is a culturally grounded tradition and practice. In the case of baby or toddler rapes, this is not due to culture as such even though some argue that it has its source in gender-based violence. Gender inequalities can be described as the outcome of a machismo culture with a strong patriarchal structure.

In order to come to terms with crimes against children it is important to have comprehensive policies in place. However, in the case of children's rights and of women's rights it is important to start working on the grass root level. Instead of focusing purely on a top down model of creating policies that are in accordance with the international community, it is equally important to use a „bottom-up“ method. This may successfully grasp the causes of child trafficking. This would imply not only education of civil servants; it would require that individuals working in institutions that come in contact with child victims of trafficking need to have a genuine approach and being clear on how to act in case a child was suspected to have been trafficked.

5.5. Suggestions for future research

Lack of new data and statistics in general has been mentioned in this study as a problem concerning the research on child trafficking. How policies regarding sex trafficking of children are essential in order to find out more about the efficiency of the policy.

There is a lack of previous research on the OPSC, how has the OPSC been implemented and how are different states adhering to the protocol? New primary data is needed on the subject matter and further cooperation between different fields in academia as well as the organizations and institutions engaged in the combat of child trafficking. Hence, to make use of a comparative study would shed light on the implementation of the OPSC and to how different states have adhered to the treaty.

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