

This is an Accepted Manuscript of an article published by Taylor & Francis in Journal of Human Trafficking on 29/02/2020, available online:

<https://www.tandfonline.com/doi/full/10.1080/23322705.2020.1690116>

TITLE

Transgender People and Human Trafficking: Intersectional Exclusion of Transgender Migrants and People of Color from Anti-trafficking Protection in the United States

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KEYWORDS

Human Trafficking; Transgender; Sex Work; Anti-Trafficking Interventions; Empirical Research

ABSTRACT

Transgender (hereafter: trans) people are rarely included in human trafficking research. This empirical study presents narratives of trans individuals who report experiences consistent with the Palermo Protocol's definition of trafficking, access to anti-trafficking services for trans individuals, and attitudes of anti-trafficking advocates and law enforcement toward trans people. Ethnographic fieldwork conducted for 30 months between March 2017 and August 2019 in Los Angeles and New York City included in-depth interviews with sex workers and trafficked persons (n=50), of which 26 were trans, and key informants (n=17) from law enforcement and social services. Most trans participants who reported exploitation did not self-identify as victims of trafficking nor were they identified by police or anti-trafficking organizations as victims. Law enforcement gatekeeping was identified by anti-trafficking advocates as a barrier to meeting the needs of trans clients because they were viewed as "less exploitable" than cisgender women. Discriminatory law enforcement practices resulted in the exclusion and hyper-criminalization of trans migrants and people of color who were profiled not only by gender, but also race/ethnicity and immigration status.

INTRODUCTION

Critical anti-trafficking scholarship has long recognized that the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol) established an ideal victim paradigm focused on sexually exploited women (Shoaps, 2013; Uy, 2011). Despite elevated exposure to interpersonal and structural vulnerabilities commonly associated with trafficking, including family rejection, physical and sexual violence, homelessness, incarceration, and employment discrimination, transgender people are rarely included in trafficking research (Egyes, 2016; Fletcher, Kisler, & Reback, 2014; Martinez & Kelle, 2013; Poteat et al., 2015; Stotzer, 2009). The invisibility of trans people among recognized victims of trafficking is rooted in the Palermo Protocol's implied characterization of the ideal trafficking victim as a cisgender woman and exacerbated by the anti-trafficking movement's persistent failure to recognize trans women as women (Shoap, 2013, Uy, 2011). Although a very small body of research exists on the experiences of trans women as trafficking victims, trans men and non-binary people are virtually absent from trafficking literature (Tomasiewicz, 2018). Lack of data corresponds with a commensurate lack of services specifically designed to meet the needs of trans people who are trafficked (Martinez & Kelle, 2013; Polaris Project, 2016; Schwarz & Britton, 2015)

In addition to reviewing existing research on trans people and trafficking, the objectives of the current study are to: 1) document personal narratives of trans individuals that meet the definition of trafficking codified in the Palermo Protocol; and 2) evaluate access to anti-trafficking services and legal interventions for trans people as well as attitudes of anti-trafficking advocates and law enforcement toward trans people. We draw on data from 30 months of

ethnographic fieldwork in New York City (NYC) and Los Angeles (LA) investigating anti-trafficking interventions targeting sex workers.

EXISTING RESEARCH ON TRANSGENDER PEOPLE AND TRAFFICKING

The state of empirical research on trafficking involving trans people is weak and relatively new. To date, only three citations indexed in Google Scholar have titles that include the words “transgender AND trafficking” (Boukli & Renz, 2018; Tomasiewicz, 2018; Wolfe, 2018), and none present new empirical data gathered with trans people. Alternative search terms for “transgender” (e.g., “trans,” “transwomen,” “transmen,” “genderqueer,” “non-binary,” etc.) yield no additional titles on trafficking. One empirical study with a title on “sexual exploitation” among trans youth was published in 2019 (Coronel-Villalobos & Saewyc, 2019), and three with titles on “survival sex” among trans people were published between 2015 to 2018, in which some but not all study participants could be legally classified as trafficked (Dank, 2015; Kattari & Begun, 2017; Logie, et al., 2018). Furthermore, relatively few articles – approximately 20 – mention trans people within studies on LGBTQ victims of trafficking, though most provide no data on trans people (Egyes, 2016; Martinez & Kelle, 2013; McGinn, 2014; Polaris Project, 2016; Schwarz & Britton, 2015; Xian, Chock, & Dwiggin, 2017), mentioning them only within the umbrella term “LGBTQ” for lesbian, gay, bisexual, trans, and queer/questioning individuals (Tomasiewicz, 2018).

Major constraints limiting research on trans people and trafficking include underreporting and gender misclassification by researchers and law enforcement agencies that do not disaggregate data beyond assigned sex at birth or legal sex on identity documentation (Farrell & Reichert, 2017). In exceptional circumstances when trans people are included in research on

trafficking, they are often excluded from final analyses due to small sample sizes or assumptions about “exceptional vulnerability” (Boukli & Renz, 2018) and perceived lack of generalizability of their experiences to other victims (Hickle & Roe-Sepowitz, 2017). Existing research demonstrates that LGBTQ people and particularly young trans people of color who experience sexual exploitation are commonly denied anti-trafficking protections (McGinn, 2014) and tend to be regarded as offenders rather than victims (Boukli & Renz, 2018).

Despite these research gaps, there is widespread agreement that marginalization from family and consequent high rates of homelessness among trans people – by some estimates as high as 30% (Grant et al, 2015) – contribute to the overrepresentation of trans individuals within street-based sex work economies (Fletcher et al., 2014; Kattari & Begun, 2017). Scholars have also linked pervasive employment discrimination trans people commonly face to engaging in sex work as a survival strategy (Boukli & Renz, 2018; Van Schuylenbergh, T'Sjoen, & Motmans, 2018). Furthermore, trans people report experiencing violence in sex work at three times the rate of cisgender people (Grant et al., 2015), yet they rarely have access to anti-trafficking services available to cisgender women in the sex industry.

Ethnographic research with trans sex workers suggests that their experiences of agency and exploitation are shaped by race, ethnicity, poverty, and immigration status, social identities which intersect with but extend beyond gender (Nuttbrock & Hwahng, 2018). In this context, trans migrants and people of color face heightened risk of situations consistent with agreed upon definitions of trafficking as stipulated by the Palermo Protocol, yet face hyper-criminalization rather than protection when interfacing with law enforcement (UNODC, 2000). Although trans sex workers of color are disproportionately targeted by law enforcement and endure some of the harshest forms of violence, harassment, and coercion at the hands of police and in prison, they

are rarely viewed as victims of trafficking or exploitation (Balaguera, 2018; National Coalition of Anti-Violence Programming, 2018; Fitzgerald, Patterson, Hickey, Biko, & Tobin, 2015). Troublingly, in addition to being “multiply minoritized” (Robertson & Sgoutas, 2012; Vidal-Ortiz, 2011) and criminalized for sex work at higher rates than any other group, trans sex workers of color are further marginalized in research, interventions, and support services (Martinez & Kelle, 2013; Poteat et al., 2015). As a result, the extent to which trans people are able to access anti-trafficking services when needed is largely unknown.

THEORETICAL FRAMEWORKS

The current research challenges neo-abolitionist epistemologies that frame all sex work as trafficking and as violence against (cisgender) women (Chuang, 2009; Vanwesenbeeck, 2018). Notably, neo-abolitionism influenced negotiations surrounding the 2000 Palermo Protocol, which left the concept of “exploitation” nebulously defined yet central to framing trafficking situations, while at the same time conflating prostitution with sexual exploitation at the top of a hierarchy of harms (Uy, 2011). This allowed for arbitrary understandings of exploitation, which influenced the development of anti-migrant and anti-sex work policies under the guise of fighting trafficking (O’Connell Davidson, 2006).

To theorize the relationship between anti-trafficking interventions and sex workers’ lives and rights, this study draws on Nicola Mai’s (2018) concept of “sexual humanitarianism,” referring to the ways in which groups of migrants and other “vulnerable subjects” are problematized, supported, and intervened upon by humanitarian institutions and states according to vulnerabilities that are supposedly associated with their sexuality or sexual behavior (Mai, 2018). This study relies on self-identifications as “victims of trafficking” and/or “sex workers” of

the people directly concerned, which are compared with sexual humanitarian criteria of victimhood. The neo-abolitionist discursive framework of trafficking relies on racialized and sex/gender related binaries that neatly, yet problematically separate choice and agency from coercion, a dichotomy that fails to reflect trans individuals' multifaceted experiences with both. Our study accounts for the ways in which trans migrants and people of color simultaneously experience agency and exploitation and define their experiences on their own terms. Here we demonstrate that just as their vulnerability is rarely seen as reaching the anti-trafficking threshold of legible exploitability, so too are they unduly subject to punitive sexual humanitarian and law enforcement interventions (Mai, 2018).

An intersectional approach is crucial to understanding how trans migrants and people of color experience the negative effects of criminalization recognized as a contributor to risk of exploitation and trafficking in the sex industry (Platt et al. 2018). For instance, in both NYC and LA, cis women viewed by authorities as trafficking victims are subject to arrests, which function as a catalyst for court supervision and referral to mandated social services (Musto, 2016). These trends are reflective of forms of “penal welfare” and “carceral protection,” in which people seen as trafficked are called victims but de facto treated as offenders as a precondition for receiving social services or legal support (Gruber, Cohen, & Mogulescu, 2016; Musto, 2016). Instead of providing meaningful state relief from discrimination and violence, sexual humanitarian discourses and the attendant penal and social service anti-trafficking responses they give rise to contribute to trans individuals' “unfreedom” and exclusion (Balaguera, 2018). In this study, we highlight the conceptual limits of the neo-abolitionist anti-trafficking paradigm and underscore how gender, race/ethnicity, and immigration status impact how trans migrants and people of color interact with the state and shape the terms of their carceral and social service provision.

METHODS

Study design: The current study draws on 30 months of ethnographic fieldwork from March 2017 to August 2019 in LA and NYC for the Sexual Humanitarianism (SEXHUM) Project. SEXHUM studies the relationship between migration, sex work, and trafficking by analyzing migrants' own understandings and experiences of agency and exploitation, and the impact of anti-trafficking and other humanitarian interventions targeting migrant sex workers in strategic urban settings in Australia (Melbourne and Sydney), France (Paris and Marseille), New Zealand (Auckland and Wellington) and the United States (New York City and Los Angeles). The study aims to reflect the perspectives and priorities of migrants working in the sex industry in order to develop more efficient and ethical policies and interventions addressing their needs.

Data collection: The methodological approach for SEXHUM is based on a combination of in-depth, semi-structured interviewing and ethnographic observations with sex workers, trafficked persons, and key informants, including social service providers, law enforcement, and legal advocates. Interviews were conducted face-to-face for approximately 60-90 minutes in English or with trained interpreters in Spanish, Thai, Mandarin, or Cantonese. Self-identified sex workers and trafficked persons were compensated in cash for their time. Key informants were not paid. Informed consent was obtained from all participants, and study procedures were approved by the Institutional Review Boards of Kingston University, London and the John Jay College of Criminal Justice at the City University of New York. To protect confidentiality, all interviewees were provided a pseudonym. Furthermore, since many study participants were the only individual from their country of origin, they are described in the results by region rather

than country of origin (e.g., Central American vs. Guatemalan). Key informants who elected to share their names or the names of their organizations are referred to by their real names.

Sample: In-depth interviews were conducted with purposively sampled, self-identified sex workers and trafficked persons (n=50) and key informants (n=17) in LA and NYC. Given the dominant emphasis on domestic minor trafficking in the U.S. and declining focus on migrant victims of trafficking over the last decade, the U.S. sample included not only migrants, but also a small group of U.S.-born people of color from groups disproportionately arrested for sex work or targeted as victims by anti-trafficking organizations (e.g., African American cisgender and transgender women). The focus of the current analysis is on data from trans interviewees within the larger sample.

Field sites: Ethnographic observations were conducted weekly throughout the fieldwork period in sex work venues and organizing spaces, diversion courts and programs, anti-trafficking collaborations between non-governmental organizations and law enforcement, and other strategic settings and events for sex workers or trafficked persons. A large portion of fieldwork in NYC was conducted in the Human Traffic Intervention Courts (HTICs) established in 2013 to divert “victim-defendants” from jail to social services (Gruber et al., 2016; Mogulescu, 2011). In LA, HTICs do not exist, but Law Enforcement Assisted Diversion (LEAD) programs are overseen by the LA County Sheriff’s Department Human Trafficking Bureau. We attended the Bureau’s quarterly Metropolitan Human Trafficking Task Force meetings, met with metropolitan task force grantees and member organizations in the Asian Pacific Islander Human Trafficking Task Force, and participated in calls for an interagency trafficking policy conference.

Data analysis: Interview transcripts were iteratively coded, sorted, and analyzed using a combination of thematic analysis guided by the theory of sexual humanitarianism and the

constant comparative method for the development of grounded theory. Transcription and coding were conducted concurrently with interviews to inform theoretical sampling for subsequent iterations of data collection until saturation of themes was achieved. Coding was conducted by two masters-level research assistants in Dedoose. Analysis of key themes and selection of quotes was completed by three postdoctoral researchers who conducted the interviews.

RESULTS

Sample characteristics: Fifty interviews were completed with sex workers and trafficked persons, of which 26 (52%) were trans individuals between the ages of 19-70 years old who were currently or previously engaged in sex work, trafficked for sexual exploitation, or had both voluntary and involuntary sex work experiences. Twenty-four were transwomen, one was a transman, and one was non-binary. Fourteen trans participants were interviewed in LA and 12 in NYC. Eighteen trans participants were born outside of the U.S. and immigrated from 10 countries: Mexico, Honduras, Guatemala, El Salvador, Costa Rica, Colombia, Guyana, Trinidad and Tobago, Uganda, and China. Eight U.S.-born trans participants included African American, Puerto Rican, Mexican American, Indigenous, Multiracial, and Caucasian individuals.

Eleven trans participants described experiences consistent with the Palermo Protocol definition of trafficking. Two described coercive or violent experiences that could not be definitively labeled as trafficking (e.g., violence during smuggling). Narratives of trafficking included forced movement, coercion during and after migration, involuntary commercial sex and other forms of exploitation, wage theft and extortion by gangs, coerced sexual favors demanded by police, and physical, sexual, and verbal abuse by employers, friends, and partners if the participant refused to engage in sex work or hand over wages.

Despite the high proportion of trans participants in the study reporting trafficking experiences, most did not self-identify nor were identified as victims by anti-trafficking organizations or law enforcement. Only two trans interviewees had ever received legal support (e.g., to apply for a T Visa) due to being designated a “victim of trafficking.” Trans migrants in the study who experienced violence but were not identified as trafficked sought redress most commonly by seeking asylum for gender-based persecution. Although none of the trans participants in NYC confirmed whether they had been through the HTICs (for reasons described below), ethnographic fieldwork outside of interviews revealed that at least one transwoman who participated in other study activities had her case processed through an HTIC. Below, the results of the primary study objectives are presented with accompanying quotes describing: 1) trafficking narratives of trans individuals; and 2) access to anti-trafficking services and legal interventions for trans people, including a short analysis of the attitudes of anti-trafficking advocates and law enforcement toward trans individuals.

1. Trafficking narratives of trans individuals

Many trans participants described experiences of violence and coercion with varying degrees of severity and a range of perceptions of agency or exploitation in trafficking situations. Although rare, some interviewees described experiences so egregious that they could not be described as anything other than trafficking. For example, Ana was kidnapped by a gang that forced her into prostitution and to sell drugs. She never thought of her experiences as voluntary:

“I thought I was going to a party, but it was a gang-affiliated house, and they thought that I was a police informant. So, they kidnapped me and sex trafficked

me and also forced me to sell drugs.” (Ana, 25, Central American migrant transwoman).

Ana was arrested in an FBI raid with her captors and several other transwomen she also identified as victims of trafficking. She spent more than two years in immigration detention and prison as a result of this raid. All of the trans migrants arrested in the raid except Ana were deported. She is now applying for a T visa with a lawyer who was able to obtain photographs and recordings showing police officers entrapping her by engaging in sex and doing drugs with her and then using this evidence against her.

Many participants described situations of being “pimped” or “trafficked” by their lovers or friends in complex, uneven relationships involving both exploitation and care. Although Marta started sex work voluntarily, she experienced exploitation in both her country of origin, where she was forced to provide sexual favors to police, and in the U.S., where she was trafficked by a boyfriend. Marta’s boyfriend coerced her into sex work and disappeared when she was arrested. As she described:

“I was unemployed for six months. Then I met a guy who became my pimp and coerced me to prostitute myself. He offered me protection from gangs... He became abusive after initially being loving.” (Marta, 47, Central American migrant transwoman).

Marta now worries that her sex work convictions will make it impossible to apply for citizenship even though she received asylum nearly 20 years ago and had extensive documentation of persecution and assassination attempts against her in her country of origin.

Like Marta, Tiffany identified both voluntary and involuntary sex work experiences that she alternately described as pimping or trafficking:

“Only doing sex work in NYC, I’ve felt exploited. I never felt exploited before that in my life doing sex work....I have been trafficked. It was a guy I was dating...He would take me state to state to make money for him, and one day he snuck me down to Mexico in the trunk of his car! I had to hide under all the blankets and he stuck tires on top of me... I was trafficked *into* Mexico! He pimped me out down there for four weeks. One day, I suggested ‘let’s go to Canada instead of Mexico.’ At the Canadian border, the pimp convinced the border patrol to “date me” one time – to be my client. So, I had to service him, but he still didn’t let us in” (Tiffany, 26, Black Caribbean migrant transwoman).

Tiffany also revealed that she had been in an extremely violent relationship with another transwoman, who had kidnapped and beat her, pimped her out, and held her captive for three months. Nonetheless, Tiffany had complicated feelings of love towards her captor, and she went back to her after she was finally able to get away. She describes: “I can’t believe I opened myself up to a transwoman, to be treated like a dog that was done with me after she got what she wanted” (Tiffany, 26, Black Caribbean transwoman).

This normalization of violence against trans people (Balaguera, 2018) was expressed by many transwomen in our study. Moreover, many did not distinguish trafficking situations they experienced from other forms of violence they were subjected to by many different perpetrators both within and outside of sex work contexts. As Clinique, explained:

“I have felt trafficked a couple of times. My exes. If I couldn’t get money, they would say it was ok to do sex work. But then after, I was called a whore. I would work and they would take my money... I felt like it was a part of what I supposed

to go through because of who I was” (Clinique, 53, African American transwoman).

Clinique also described being exploited by members of her own community, including other transwomen in a local shelter who pressured her to work for them on the stroll and beat her up when she did not comply. In addition to being pressured to sell sex by intimate partners and community members, Clinique described feeling persecuted by police:

“Even if I would be battered and abused, the police would tend to let my partner run free. I would be the one that gets locked up or in jeopardy of going to jail even though I’m telling them someone is abusing me and stealing my shit. I never felt protected by the law.” (Clinique, 53, African-American transwoman).

Most participants described being trafficked, but then later decided to continue sex work due to legal restrictions limiting their employment opportunities. Marta explained:

“I have prostituted myself [since my arrest] until today. I had discrimination for other jobs because I didn’t have a legal name change. Initially, I was a victim when my boyfriend/pimp coerced me, but later I continued to do sex work out of circumstance. Since that relationship ended, I have continued to do sex work by choice.” (Marta, 47, Central American migrant transwoman).

Exploitation by gangs was cited by several trans interviewees. Here our findings extend Balaguera’s research highlighting trans migrants’ heightened exposure to gang violence and retaliation (Balaguera, 2018). Kamila described being forced into paying taxes to local gangs in the U.S. in order to work on the street in exchange for protection:

“I have done sex work to get by since I got out of detention and prison on bond

because I'm not legally allowed to work... I don't have legal status and I have to pay a tax to gangsters for protection. I don't know if they would actually protect me" (Kamila, 35, Central American migrant transwoman).

Luna (27, U.S. born Latina transwoman) described her sex work experience as voluntary. However, she was also subjected to taxes by gangs with a promise of protection that never materialized: "I was not exploited in prostitution, except the gangs would tax us on the street... They were supposed to protect, us but they didn't give us any protection. They just took our money" (Luna, 27, US-born Latina transwoman).

Trans participants were generally aware of what trafficking means but did not self-identify as victims, except in the most egregious cases or when identified by an organization or legal advocate as a victim of trafficking. For example, Ana (25, Central American migrant transwoman) explained, "I heard this word in the FBI case. My lawyer said that I was a victim of trafficking," while Guadalupe (50, North American migrant transwoman) described trafficking as: "Force, wage theft. There are men out there who will con you into believing that you will have a job out there, and that it will change your life."

Among trans participants who reported experiences that fit the definition of trafficking, many rejected the label of "victim" when others tried to impose it on them. For instance, Dominique described a story of coerced sex demanded by a police officer in exchange for no arrest. Yet she expressed discomfort in being labeled a victim, explaining. "I did what I had to do." Dominique also conveyed that anti-trafficking organizations are not welcoming to trans people:

"A lot of those [anti-trafficking] programs are geared toward everyone except trans female prostitutes. People think that we do it for fun, for the thrills, not

because we have to do it. When you see a biological female who's a prostitute, and a transwoman prostitute, you're more likely to feel bad for the biological female, because 'she was forced.' The trans person is seen as doing it for other reasons. There's more sympathy for biological females. Even in terms of law, even with cops, they're more likely to be lenient with biological females than with trans girls. I don't need you to feel bad for me, but it's a double standard"

(Dominique, 27, US-born biracial transwoman).

As Dominique points out, whether trans people identify as victims or not, they are still treated differently compared to cis women. As JP explains, this results in exclusion from needed services:

"I feel like shit when people tell me I've been trafficked. All sex workers are human beings. We are all human beings. All over the US, all we ask is to be treated fairly, not different. When we come to your org, we expect you to address us. But the first thing they do is kick us out—even when we went to you more than once. I'm tired of being kicked out of places" (JP, 38, US-born biracial Latina transwoman).

Eva also highlights the failure of the anti-trafficking movement to meet the needs of people of color and trans people, noting that exclusion in anti-trafficking organizations is intersectional, based not just on gender but also race and class:

"It is white girls who have the most privilege and visibility in this space. If you're not a cis white girl, your experiences are invisible. All of the power and resources go to them" (Eva, 25, Central American migrant non-binary person).

The experiences analyzed in this section clearly demonstrate a variety of exploitative situations experienced by trans participants that fit the definition of trafficking outlined in the

Palermo Protocol. However, most respondents also expressed ambivalence about being labeled a victim of trafficking and were skeptical that anti-trafficking organizations could meet their needs without marginalizing them further.

2. Access to anti-trafficking services and legal interventions for trans people

Most trans participants who described being trafficked had to endure several arrests and long periods of incarceration before their victimization was recognized. For example, Ana served a year in federal prison and 17 months in immigration detention after she was arrested in an FBI anti-trafficking “raid and rescue” operation. Although Ana has applied for a T Visa as a victim of trafficking and previously obtained CAT protection (due to torture in her country of origin), she still has criminal convictions for actions she was forced to commit during her trafficking situation. Ana was unaware that these convictions could potentially be expunged.

“I hope I will be able to stay on that [T Visa], but it is still hard because my criminal record isn’t clean. I still have convictions for the things I was forced to do on my record. I did not know that these could be taken away” (Ana, 25, Central American migrant transwoman).

In terms of legal protections, police persecution was one of the most commonly recounted experiences across all study participants. Trans participants did not feel a sense of security and in many cases, felt that law enforcement officers were more likely to victimize or exploit them than any other group, even when they were specifically tasked with aiding victims of trafficking. Eva, a self-identified non-binary survivor of trafficking, was especially disgusted by the officers who were supposed to protect them. Eva’s exploitation began at age 15 after coming to the US undocumented.

“I was never treated like a victim. I was treated like a criminal. A whore, trash, an animal. The way police operate, the system itself is violent and oppressive. They’re like slave catchers... slave patrol, poverty catchers” (Eva, 25, Central American migrant non-binary person).

Marta also reported experiences of police taking advantage of her precarious legal status within the context of sex work criminalization:

“I also have clients who are cops, but I don’t charge them because I don’t want to get arrested. I let them leave a donation if they want to, but otherwise I do it for free to avoid arrest. [Someone] I know does massages, and cops all come and ask for happy endings. It is like that. I don’t want to get arrested again because it could affect my immigration status” (Marta, 47, Central American migrant transwoman).

Marta, Kamila, Dominique, Ana, and Guadalupe all reported being assaulted by a police officer, in some cases repeatedly, but they had never been approached by any organizations that help people who are trafficked. Guadalupe commented: “I don’t know any orgs that help people who are trafficked, but I know how to report to police. I don’t do this because the police always blamed me when I reported assault” (Guadalupe, 50, North American migrant transwoman).

Few of the interviewees had ever interacted directly with an anti-trafficking organization nor were they offered diversion or legal assistance during sex work arrests. For example, Clinique was arrested in a state where prostitution diversion programs exist, but she was not given the option. She eventually connected with a non-profit legal services and advocacy organization for sex workers and trafficking survivors where she found a lawyer to help her navigate her court cases. Nevertheless, she still ended up serving jail time and had to resort to

selling sex again after her release. Clinique uses the language of trafficking to frame her post-incarceration experiences:

“[I finally] got out, I was on probation. I had to pay a healthy fine. From where? What was I supposed to do getting that money?... Which left me to do survival sex work again... I was evicted after that. It was a domino effect that negatively affected me after that arrest. If I wasn’t trafficked by someone else, you’re forcing me into trafficking now. And a lot scarier sex. Because you took everything from me—including my job. And got away with it” (Clinique, 52, African-American transwoman).

JP described experiences of kidnapping, rape, and having had guns held to her head while trading sex. She also reported experiencing 90-100 arrests, in addition to violence and rape from police, inmates, and correctional officers:

“I’ve been arrested from childhood to adulthood... All my life was incarceration. Sex work. Incarceration. Sex work. Every time, I had cops bust me sex working” (JP, 38, Biracial U.S. born transwoman).

JP’s arrests resulted in being processed through a variety of courts: “Been in prostitution court, drug court, mental health court, criminal court, supreme court... I can’t even remember them all.” The overwhelming frequency of arrest and court involvement made it difficult for JP to differentiate between the types of courts, the results of different cases, and the mandated services she was required to complete. As a result, it was difficult for the interviewer to discern whether or not JP had attended the HTICs, or the prostitution diversion courts that preceded them. While JP was mandated services for substance use and mental illness, which she described as “not really helpful,” she said she was never treated as a victim of trafficking. JP’s experiences

highlight inconsistencies within diversion programs and court-mandated service provisions, and a general “muddiness” surrounding the U.S. criminal justice system for trafficking victims (Yale Law School & Sex Workers Project, 2018).

Law enforcement “filtering” of who is determined to be a victim was reported as a major barrier by anti-trafficking organizations. Social service providers recounted feeling discouraged from providing assistance to trans individuals during anti-trafficking operations because police said the services were “only available for victims,” consistent with previous research highlighting law enforcement refusal to file reports on the trafficking of LGBTQ persons (Boukli & Renz, 2018). According to Attorney Leigh Lattimer, advocates “have to work harder to prove trans migrants are trafficked” because there is a misconception that trans people like sex work and cannot be exploited. As Lattimer further elaborates,

“There is generally less sympathy from the DA’s office. They often seem to feel that trans people always have agency in their choices; they are less exploitable somehow. The prosecutors simply view it as a voluntary choice that the trans people have made – which leads them to ignore the possibility of trafficking, as well as ignore the reality of discrimination trans people face, like discrimination in the workplaces – which is why many of them end up in sex work!” (Leigh Lattimer, Legal Aid Society).

Advocates also relayed that over-policing in trans communities limits access to services, and criminal records are used against transwomen more than cisgender women. Many key informants and trans participants additionally stressed that trans people often engage in “survival sex work” out of economic necessity and have limited choices.

For trans participants who did come into contact with anti-trafficking organizations or other sexual humanitarian interventions, they highlighted that the label of victim did not afford

them the same benefits, protections, or services provided to cisgender victims. However, a small number of participants did express gratitude for services they received when they connected with trans-led organizations through reentry programs, which were usually not court-mandated. In particular, participants found services with a health or legal focus particularly useful, and they preferred organizations specifically designed or run by other trans people where they felt more respected and accepted.

DISCUSSION

Our findings reveal that trans migrants and people of color in the sex industry are intersectionally vulnerable to abuse and criminalization, which is rarely recognized by anti-trafficking interventions. Transwomen, in particular, tend to be viewed as “unexploitable” by law enforcement because of their assumed willingness to work in the sex industry. When trans people report being victims of a crime, the prosecution of their sex work offences is prioritized by police unlike many cis women who are afforded the simultaneous label of victim-offender at the time of arrest (Musto, 2016). Furthermore, we found that most anti-trafficking organizations express openness to trans clients but do not effectively reach them. Key informants from anti-trafficking organizations expressed that law enforcement gatekeeping was a barrier that impeded support for trans individuals during anti-trafficking operations (Haynes, 2006; Whitford, 2018).

It is important to note that trafficking is one of many forms of violence to which trans people are exposed and was generally viewed by study participants as less severe or pervasive than other forms of interpersonal and institutional violence they had endured in nearly every aspect and stage of their lives (Balaguera, 2018), including institutional exclusion from housing and employment (Stotzer, 2009). Due to the severity of violence experienced by trans

participants at the hands of law enforcement, we caution against simply extending the label of “trafficking victim” to the complex experiences of exploitation and agency of trans people working in the sex industry (Barnard, 2015; Hoyle et al., 2011). Stretching the discursive boundaries of the ideal victim paradigm (Uy, 2011) set by the Palermo Protocol such that trans migrants and people of color are moved to a more visible position within the “hierarchy of victimhood” would do little to ameliorate the structural inequalities that shape their lives (Andrijasevic & Mai, 2016; Boukli & Renz, 2018, p. 8).

Nonetheless, resources and services tailored to trans clients’ specific experiences are desperately needed, as is a broader account of gaps that exist in anti-trafficking responses. A lack of transparency about who is offered diversion or services following a sex work arrest is one such gap that highlights the embeddedness of anti-trafficking interventions within repressive anti-sex work and anti-migration law enforcement practices (Mai, 2018), which target trans migrants and people of color as offenders rather than victims.

Of additional note, anti-trafficking programs had minimal impact on the lives of trans participants who experienced trafficking, most of whom were unaware of service offerings, if not implicitly or explicitly excluded. Plainly put, trans people experience all of the punitive force of the U.S. criminal justice system but receive none of the anti-trafficking protection. Self-organized communities with limited resources are left to fill in the gaps in service provision. Community-based research and peer-led service programs designed by and for trans sex workers promote resistance and resilience to counter larger oppressive structures that lead to the exploitation of trans individuals (Outlaw, McCracken, & Saunders, 2016). More resources are needed to support their critically important work with trans migrants and people of color.

ACKNOWLEDGEMENTS

This study was supported by a grant from the European Research Council (ERC CoG 682451). Support for the first author was also provided by a center grant at the UCLA Center for HIV Identification, Prevention, and Treatment Services (NIMH MH058107), a training grant at the UCLA Semel Institute for Neuroscience and Human Behavior (NIMH T32MH109205), and a training grant at the University of California Global Health Institute (UCGHI) from the NIH Fogarty International Center (FIC D43TW009343). The content is solely the responsibility of the authors and does not necessarily represent the official views of the ERC, NIH, FIC, or other funders. We thank Dhara Patel and Whitney Akabike for their assistance with coding and data management. We are grateful to all of the trans participants and key informants in our study, as well as the community partners who made this research possible.

ETHICAL APPROVAL

This study was approved by the Institutional Review Boards of Kingston University, London and the City University of New York.

DISCLOSURE STATEMENT

Authors report no conflicts of interest.

DATA AVAILABILITY

Due to confidentiality protections for study participants required by the Institutional Review Boards that approved this study, the data cannot be made publicly available.

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