

Accountability and the Use of Raids to Fight Trafficking

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Abstract

Accountability in anti-trafficking efforts is a crucial but often overlooked aspect of deciding whether such efforts are truly rooted in a human rights framework. In a rush to help, and inspired by sensationalised views of what human trafficking is, many campaigns actually harm the very people they are supposed to assist. Law enforcement raids are one such effort, as they do not take into account the very different power dynamics between the actor engaging in the raid, and the person who is subject to the raid. Data from the United States suggests that raids conducted by local law enforcement agencies are an ineffective means of locating and identifying trafficked persons. Research also reveals that raids are all too frequently accompanied by violations of the human rights of trafficked persons and sex workers alike, and can therefore be counterproductive to the underlying goals of anti-trafficking initiatives. Findings suggest that a rights-based and “survivor-centred” approach to trafficking in persons requires the development and promotion of alternative methods of identifying and protecting the rights of trafficked persons which prioritise the needs, agency, and self-determination of trafficking survivors. They also indicate that preventative approaches, which address the circumstances that facilitate trafficking in persons, should be pursued over law enforcement based responses.

Keywords: trafficking, mobility, migration, law enforcement, raids, US

Introduction

Trafficking in persons, in all its forms, is a severe human rights violation. It requires well-planned and targeted solutions rooted in the needs of communities. These solutions must address the problem of force, fraud, or coercion in different labour sectors. A truly effective approach to human trafficking involves efforts that respect the human rights and voices of trafficked persons, and also holds government and well-meaning private actors accountable when they engage in prevention and interventions. But too often, anti-trafficking policy is built on emotional responses and can cause serious, unintended damage that drives trafficked persons further into the shadows.

Accountability of all actors is crucial because there are great power dynamics at work in anti-trafficking approaches and attempts at assistance. This paper will make the argument and provide supporting evidence that one of the clearest examples of misguided anti-trafficking efforts in the United States is the anti-trafficking raid, usually aimed at those working in the sex sector who may appear trafficked to outsiders without information on the conditions of work. A person in a coercive situation, not necessarily aware of his or her legal rights, typically fears and does not trust law enforcement agents. Research conducted by one of the authors has documented the ways that law enforcement approaches to human trafficking can fail trafficked persons, including through arrest, detention, and prevention of contact with the trafficked person's family.¹ However, most services and legal protections that trafficked persons can access in the United States are related to efforts to cooperate with law enforcement. This prioritises raids and prosecution-oriented legal procedures rather than rights-based, survivor-centred approaches necessary for full recovery from a trafficking experience.

This research demonstrates that raids should be used only as a last resort. Raids conducted in the United States require quick and unexpected action, and, in the anti-trafficking context, they are rarely executed on the basis of in-depth investigation that elicits reliable evidence and witness testimony. While government and community members claim to be taking action on trafficking, victims are often harmed in the process because raids are invariably traumatic and often

¹ M Ditmore, *The Use of Raids to Fight Trafficking in Persons*, Sex Workers Project, New York, 2009, <http://www.sexworkersproject.org>.

have strong negative effects on victims and their legal status (including deportation and interference with the ability to work and earn money). In addition, potential traffickers may never be held accountable due to a lack of evidence against them. Raids often do not result in strong testimony against perceived traffickers. Consequently, raids do not promote accountability of governments, traffickers, or communities.

In addition to law enforcement raids, numerous well-meaning “Good Samaritans” engage in anti-trafficking raids, either in cooperation with law enforcement or on their own. Such efforts are extremely dangerous for trafficked persons. Private actors and organisations meaning to help often do not have the experience or expertise to identify whether people have actually been trafficked, and they rarely have the capacity or expertise required to offer high-quality legal and social services to those who have been trafficked or who were caught in a raid.² Critiques of law enforcement raids are relevant to those conducted by private actors. In fact, because there is even less opportunity for oversight and accountability, raids by private actors not involved with local law enforcement may be even more dangerous.

Background

Law enforcement raids have served as the US government’s primary means of identifying victims of trafficking in persons.³ While there have been some successes, law enforcement based approaches to trafficking have led to the identification of very few trafficked persons.⁴ The failure of law enforcement raids to successfully locate, identify, and refer large numbers of trafficked persons in the United States to supportive services may result from the fact that these raids are driven by, and sometimes indistinguishable from, efforts to curb prostitution and other forms of sex work. Government funding streams reflect, in

² United Nations Population Fund (UNFPA), *Thematic Task Team on Migration and Mobility in the Context of HIV and Sex Work* in preparation for the 1st Asia and the Pacific Regional Consultation on HIV and Sex Work, 12–15 October 2010 in Pattaya, Thailand.

³ United States Government Accountability Office (US GAO), *Human Trafficking: Better data, strategy, and reporting needed to enhance US anti-trafficking efforts abroad*, US GAO, Washington, DC, 2006.

⁴ P Meyer, ‘Three Paths to Dallas: How three South Korean women made it to Dallas spas’ *The Dallas Morning News*, 7 May 2006, <http://extrablog.dallasnews.com/>.

particular, the conflation of trafficking with prostitution. Funding made available under the *Trafficking Victims Protection Reauthorization Act of 2005*⁵ (TVPRA) focuses on grants to state and local law enforcement to investigate and prosecute buyers of commercial sex.⁶ As a result of this funding, local law enforcement agencies have sought federal funding for ‘anti-trafficking task forces’ which, in theory, are made up of local and federal law enforcement personnel alongside social and legal service providers, but which in reality can simply be vice squads by another name. One study found that ‘some local task forces have focused exclusively on prostitution, making no distinction between prostitution and sex trafficking and not pursuing labour trafficking cases’.⁷ These reports demonstrate that prioritising the policing of prostitution distorts the goal of anti-trafficking interventions meant to identify and respond to coercion and abuse. It also undermines the identification of trafficked persons, especially in domestic, agricultural, and service sectors. The way in which funding is allocated and disbursed has specific consequences. In this case, funding arrangements to law enforcement often exacerbate a lack of accountability by government actors who have not operated on a credible or common understanding of the definition of trafficking.

Methodology

In-depth interviews were conducted with 46 people in the United States, including immigrant sex workers and trafficked persons who have experienced raids or otherwise had contact with law enforcement, along with service providers, attorneys, and law enforcement personnel. The identities of all individuals interviewed for this report were protected. All names used in this paper are pseudonyms.

The data collected from this small-to-medium sample is extremely rich and represents one of the first efforts since the passage of the

⁵ *Trafficking Victims Protection Reauthorization Act of 2005*, Pub. L. No. 109-64, 119 Stat. 3558 (2005) (codified as amended in scattered sections of the U.S.C.)

⁶ See: Global Alliance Against Traffic in Women, *Collateral Damage: The impact of anti-trafficking measures on human rights around the world*, GAATW, Bangkok, 2007; Women’s Commission for Refugee Women and Children, *The US Response to Human Trafficking: An unbalanced approach*, Women’s Commission for Refugee Women and Children, New York, 2007, http://www.womencommission.org/pdf/us_trfkg.pdf.

⁷ *Ibid.*, Women’s Commission for Refugee Women and Children.

Trafficking Victims Protection Act to give voice to the experiences and perspectives of trafficked persons and sex workers who have experienced anti-trafficking raids.

Fifteen women who experienced law enforcement operations relating to trafficking in persons or sex work were interviewed in 2007 and 2008 in New York City. Participants were recruited among immigrant sex workers and trafficked persons, as they were most likely to have experienced law enforcement interventions relating to trafficking in persons. Participants were referred to researchers by two New York City-based social service agencies and one sex worker organisation. With the exception of one, all interviews were conducted with translators. Some participants had lived or now live in other parts of the United States. One participant has since returned to her native country.

Legal and social service providers from around the country were interviewed, including attorneys and social workers from 18 agencies in 14 locations in seven states, including the Northeast, Southeast, Southwest, Midwest, West Coast and Washington, DC. While the majority of service providers worked exclusively with trafficked persons, 5 of the 26 worked exclusively with sex workers, whether they entered the trade by choice, circumstance, or coercion.

Five law enforcement personnel from across the United States were interviewed. The term “personnel” is used to protect the identities of those with whom we spoke. Two people in law enforcement declined to be interviewed, and both indicated that no one in their departments would be permitted to participate in this study.

Demographic data including age, place of origin, and ethnicity were collected from the 15 trafficked persons interviewed but not from law enforcement or social and legal service providers.

The responses were analysed to identify recurring themes. A “grounded theoretical analysis” approach⁸ was used, in which macro-level principles and concepts related to trafficking were linked to micro-level examples provided by participants. This was accomplished by

⁸ J A Wasserman, J M Clair, and K L Wilson, ‘Problematics of Grounded Theory: Innovations for developing an increasingly rigorous qualitative method’ *Qualitative Research*, 9, 2009, pp. 355–382.

identifying micro-level recurring themes within the data. Themes identified are reflected in the findings below.

This analysis of qualitative data addresses accountability in greater depth and focus than the original report for which this data was collected. More basic information and additional analysis was included in the full report, *The Use of Raids to Fight Trafficking in Persons*, released by the Sex Workers Project at the Urban Justice Center in 2009.⁹ The full report includes the interview protocols. This project was conducted in accordance with ethical research principles, and an ethical review was conducted and approved by a cooperating NGO in New York City.

Findings

Experiences of trafficked persons and sex workers

It was 6 AM. They knocked at the door, I thought it was the landlady and I didn't ask and I opened the door. It was dark in the hall and the flashlight was in my eyes, I was so scared, I didn't know they were police, they didn't say they were police and I tried to close the door and they pushed it open....Then I realised this is not a joke, we will have serious problems....I was thinking, the police! Now we're doomed because the trafficker will kill us now!

— Vida, trafficked domestic worker

The place was not a jail. It was a hotel, but in the hotel, we were closed in for a week, and couldn't leave...we couldn't do anything. Then I went to a shelter for women. After about a week...I was worried about myself—my future, what was going to happen...[I felt] bad. Very stressful. I had headaches. It's kind of difficult to talk about, because I felt a lot of stress. I had a lot of headaches. It made me feel like I wanted to cry. I didn't want to eat.

— Marta, who does not identify as having been trafficked

⁹ Ditmore, *op. cit.*

They were wearing guns and uniforms, and it made me very scared. They didn't tell us anything. They treated us like criminals during the arrest and it was scary.

– Lily, picked up in vice and anti-trafficking raids

The women interviewed for this report immigrated to the US from Asia (2), Eastern Europe (5) and Latin America (8). Fourteen of 15 participants had been recognised by the US government as trafficked at the time of the interview.

Of the 15 participants who had experienced engagement with law enforcement, 12 had been involved in sex work, working in venues including brothels, strip clubs and massage parlours. Seven of the 12 had engaged in sex work before coming to the United States, five in prostitution and two as exotic dancers. Some were in coercive situations before entering the United States, while some were not. Two worked in the legal sex industry in the United States, one as a dancer, the other in a venue for sadomasochistic play in which no illegal conduct occurred. Three of the 15 participants were employed in other sectors, including domestic work.

The experiences of the participants were varied, and included federal anti-trafficking raids and raids by the local police, with some women experiencing both kinds of raids. Seven of the 15 women had been picked up in federal anti-trafficking raids. Nine of the 15 women had been arrested in local police raids. Two women interviewed had experienced raids by both local police (vice squads and anti-prostitution raids) and federal agents (anti-trafficking raids).

Some women reported multiple arrests in raids by local police. The number of arrests by local police experienced by individual women ranged from one to ten. None of the 15 women interviewed had been identified as trafficked by local law enforcement following a raid, despite the fact that seven of these nine women identified as trafficked. Only one had been asked whether she was coerced into sex work following arrest by local law enforcement.

While 14 out of 15 interviewees were eventually recognised as victims of trafficking by the US government, not all those later recognised as victims of trafficking identified as such at the time of being involved in a police raid. Five of the seven women picked up in federal anti-trafficking raids believed that they had been trafficked. Three of the five who believed that they had been trafficked at the time of their experience with a federal raid were not involved in sex work. The two

women out of the five women who believed that they were trafficked and had engaged in sex work were held in immigration detention for weeks before identifying themselves to law enforcement as trafficked. One woman was jailed on a prostitution conviction after a raid, until her defense attorney recognised that she might have been trafficked.

Numbers of raids and arrests experienced varied by race and ethnicity. In this study, Latinas experienced the greatest numbers of arrests, typically related to prostitution, followed by Asian women.

Overall, participants reported that raids were chaotic and often traumatic events which left them frightened and confused, with no sense of what was happening or would happen to them. They made it quite clear that they did not understand who was conducting the raid (other than government agents), what its purpose was (other than to arrest and deport them), or what the outcome might be.

The women interviewed expressed a variety of opinions on the use of raids as an anti-trafficking tool and the role played by the raid in obtaining their freedom. Participants who did not identify as trafficked uniformly objected to the raids. Many who were identified as trafficked resented their experiences during raids. Jin, who was arrested in a local police raid, expressed anger at having been pistol-whipped, and said that she would eventually have left on her own, because she expected to be released by her trafficker within days of the raid in which she was arrested.

Josefina, who was coerced into prostitution and was identified as trafficked as a result of a federal anti-trafficking raid, said that she would have left on her own if she had known of a safe place to go. Although Ofelia knew of no other way to escape her situation, she nevertheless described the raid and her subsequent detention as “terrible”. Another woman said that she would have preferred to leave her situation by leaving with a co-worker rather than being rounded up in a raid. Additionally, six of the women interviewed for this report who identified as trafficked left trafficking situations after and independent of their involvement with law enforcement. They reported receiving help from a variety of people, including clients and co-workers at sex work venues, who recognised that they were in coercive situations and stepped in to offer help. These six women who left on their own after their involvement with law enforcement subsequently approached law enforcement on their own behalf, and cooperated in the prosecution of their traffickers.

Three women who were not trafficked into sex work, but rather into other labour sectors including domestic and home-based work, faced severe isolation. Such isolated workplaces present specific challenges to anti-trafficking efforts. Tatiana said, ‘Everyone I knew was in the same situation.’ Zora said, ‘There was no one to help us.’ These women were located, removed from their coercive circumstances, and recognised as trafficked persons after federal raids following in-depth investigations. Vida described the raid as frightening and reported that she experienced disrespectful treatment, but she also said that she appreciated the benefits and the immigration status offered to certified victims of trafficking.

These three women—who, notably, were not trafficked into sex work, but into other labour sectors that have not been the focus of current anti-trafficking initiatives in the United States—could not conceive of any other way they would have been able to leave their coercive situations. However, they still reported that the method used—a law enforcement raid—did come at a cost to themselves.

Two other participants were taken in for questioning after two law enforcement agents knocked on their doors as part of an in-depth investigation into suspected trafficking. Based on the women’s descriptions of events, this approach appeared to be far less chaotic and had fewer traumatic impacts than a full-on raid. Indeed, one of the women contrasted this experience positively with an anti-prostitution raid she had experienced. However, the law enforcement agents questioned the women involved without an attorney present.

Perspectives from law enforcement

The nature of the crime and the nature of the victims make raids not effective. What level of evidence do you need? You need a victim to be willing to open up and tell you...I don’t see raids being a consistently effective tool. The best situation is if you know there’s a problem.

— Law enforcement personnel

It’s such an overwhelming situation, and why would they trust us?

— Law enforcement personnel

Law enforcement personnel interviewed for this study described the procedures, positive outcomes, and challenges of anti-trafficking raids, expressing mixed views about the efficacy of raids as anti-trafficking tools.

Four of the five law enforcement personnel interviewed had been on-site during raids. The fifth had worked with people caught up in raids who the government thought may be victims. Two of these five were very critical of the use of raids, noting that people who experience raids are often not good witnesses in subsequent anti-trafficking investigations and prosecutions because they are distrustful of law enforcement. One of the five believed raids produced both good and bad results, while two spoke in favour of raids.

At least one law enforcement employee reported experiencing symptoms associated with secondary trauma.

Law enforcement personnel described difficulties gaining the trust of people who had been victimised and who were subsequently detained. However, they reported that raids were useful for the following reasons: to locate and identify witnesses for law enforcement efforts; to dismantle criminal networks; and to remove victims of abuse from terrible situations. In theory, they believed that raids lead to the delivery of services and assistance to trafficked persons.

The perspectives of law enforcement personnel differed from those of trafficking survivors and sex workers in that their primary focus was the successful initiation of criminal prosecutions and the willingness of trafficked persons to serve as witnesses. The extremely divergent perspectives of raids held by law enforcement and people affected by raids, including trafficked persons, highlights an extreme gap in accountability to the very persons law enforcement efforts are intended to assist. Nevertheless, law enforcement personnel indicated that criminal justice procedures are less likely to be successful where trafficked persons are intimidated by law enforcement actions.

Perspectives from service providers

The raids that I'm most familiar with have taken place in the wee hours of the morning, usually in a person's home, not in their place of work, and it's been really frightening. They initially believe it's because they are undocumented, and then later, in the moment in high drama, they realise [that law enforcement agents] are after the victims

because of prostitution, and then it becomes frightening because their families don't know they were involved in prostitution...Usually in the raids I've been told about the law enforcement officer playing tough before explaining that law enforcement believes the women are victims. One client described...that on the way to the station, an ICE agent said, 'You shouldn't be in this country anyway,' and she said later, 'How dare you! You have no idea how I got here!' And she had been trafficked and had the feeling of humiliation and powerlessness.

– Case worker from Northeastern United States

By the time that we talked to any of the women in any of these cases, they had already been interrogated at least once if not more, and based on those interrogations, maybe a second or third, their entire future is determined. They aren't informed about their rights in a way that a reasonable person would believe. I arrest you, handcuff you, fingerprint you, interrogate you and then tell you that you have these rights.

– West Coast attorney for trafficked persons

Social service providers and attorneys interviewed generally asserted a belief, based on their own experience, that the use of raids to combat trafficking in persons is inherently not premised upon the needs of trafficked people but rather on the goal of prosecution. Accountability to the victims of crime was reported to be diminished in the service of prosecution. Service providers emphasised that raids are chaotic events during which the people directly targeted have little understanding of what is happening. They cited trauma and detention as common consequences of raids targeting persons who had been or were suspected of being trafficked. Service providers also noted that treatment during raids bears directly upon whether a person who has been detained will speak frankly about his or her experiences, or will self-identify as having been coerced or otherwise abused.

Social workers and attorneys, and particularly those who have been present at or following a raid, spoke strongly against raids. All 26 service providers stated that they did not receive referrals of trafficked persons as a result of local police vice raids, suggesting that such raids do not result in the identification of trafficked persons. All service providers interviewed reported that federal anti-trafficking raids can lead to the deportation of many people before they can be properly screened for trafficking, and that law enforcement did not consistently

follow up on a trafficked person's willingness to cooperate with investigations or provide the necessary support for applications to adjust immigration status and for benefits and assistance.

Service providers reported that there does not appear to be a standard procedure for identifying trafficked persons following federal anti-trafficking raids or local law enforcement vice raids, leading to widely divergent treatment of people caught up in such raids. For example, vice raids can lead to revolving door arrests for prostitution, while immigration raids can lead to detention and deportation, and in some cases to the eventual identification of trafficked persons. Service providers further stated that law enforcement agents use interrogation techniques, often involving intimidation, that are entirely incompatible with an approach that prioritises the rights and needs of trafficked persons.

Social service providers in the United States said their clients experienced symptoms of trauma after raids, and noted that, in addition, raids can uproot trafficked persons from their ethnic communities, and also effectively render them homeless and without possessions. Some people picked up in raids, especially those who earned living wages, experienced severe economic hardship as a result. Many trafficking survivors were alienated from law enforcement by their experiences of raids and did not speak about their situations, at least initially. Others, including those who were trafficked by their husbands or partners, did not self-identify as trafficked persons following raids. Service providers described that the trauma of raids and the requirement of subsequent cooperation with law enforcement have long-term effects on trafficked persons and people who do not self-identify as trafficked. The traumas described by service providers included physical violence (for example, one trafficked woman interviewed had been knocked unconscious with a pistol during a raid) and emotional trauma because they did not understand what was happening (some believed they were being kidnapped, some believed they would be raped by the police).

Service providers reported that the majority of trafficked persons who accessed their services were not identified as a result of raids. One supervisor with a national organisation said, 'Ninety percent of our cases are not from raids, not even law enforcement identified'. In many cases, people often leave trafficking situations with the help of co-workers and clients. This was reported frequently about people trafficked into the sex industry.

Discussion and Recommendations

This study finds that persons found in raids describe raids as traumatic, lacking procedures to identify trafficked persons, and a lack of follow-through by law enforcement on assistance to trafficked persons. These findings point to a failure of accountability. This failure is particularly acute with respect to trafficked persons and others who have been caught up in raids.

It is clear that other approaches to locating, identifying, and assisting trafficked persons are necessary. Such approaches, particularly if based on meeting the needs, protecting the rights, and supporting the self-determination of trafficked persons, may prove to be a more effective response to trafficking in persons.

Alternative methods of locating and identifying trafficked people in isolated workplaces, such as private homes, could include the following: strengthening and closely monitoring labour protections for domestic workers; increasing awareness of protections available to undocumented workers and trafficked persons; and empowering immigrant communities to identify and intervene appropriately in trafficking situations. Community members seeking to assist potentially trafficked persons have an important role to play: to share information about legal rights that are available to all; to be aware of what trafficking conditions may look like; and to report concerns to qualified anti-trafficking organisations which have expertise in identifying and serving trafficked persons from a survivor-centred approach. The broader community should also be supported to ensure they are able to help in identifying potential trafficking situations and responding appropriately or calling law enforcement in emergency situations. Well-meaning individuals have helped trafficked persons leave their situations with referrals and introductions to qualified and survivor-centred service providers. Expanding the responsibility for identification and protection could lead to positive outcomes without violating the rights and dignity of trafficked persons that can accompany a raid.

The experiences of people who left trafficking situations without the intervention of law enforcement agencies suggest that these alternative ways of reaching trafficked persons can be useful. Specifically, increasing awareness among sex workers and immigrant communities of resources available to trafficked people would enable more trafficked people to leave coercive situations without the necessity and trauma of law enforcement intervention. Such an approach could be led and implemented by people familiar with sex work or work in other sectors

where trafficking is prevalent, such as domestic work, agricultural labour, and service sectors. Other leaders in these efforts could include individuals who have experienced trafficking, social service providers, and immigrant rights advocates. Women interviewed for this report described being helped by people they knew, including clients and co-workers, who recognised that they were in coercive situations and stepped in to offer help. Because they left trafficking situations in a non-coercive manner, avoiding the trauma associated with a law enforcement raid, they were more prepared to cooperate with law enforcement in the prosecution of their traffickers. Ultimately, an approach that recognises and supports the rights, agency, and self-determination of trafficked persons is likely to produce better outcomes for trafficking survivors—the people to whom anti-trafficking efforts should ultimately be accountable.

Accountability can also be improved by ensuring that the government provides unconditional access to services and assistance to trafficked persons, rescinding the present requirement that trafficked persons be willing to cooperate with law enforcement. Allocating funds to organisations involved in empowering immigrant communities and workers in informal economies would help protect these vulnerable groups and support their efforts to seek redress for coercion. More vigorous enforcement of labour laws (which largely apply to everyone in the United States, including undocumented migrants and trafficked persons) is recommended to combat debt bondage and other violations.

As raids have generally not led to the identification of trafficked persons, it is necessary to consider ways in which the current poor identification rates can be improved. The training of immigration officials, judges, defense attorneys, and prosecutors to identify and make appropriate referrals for trafficked persons is crucial.

Our findings confirm a number of gaps and weaknesses that could be remedied to increase accountability by law enforcement agencies. For example, it is evident that vice raids are not effective anti-trafficking measures and should not be used. Solutions relying on in-depth investigations and voluntary cooperation should be prioritised. For example, the experiences of women who described being approached by law enforcement outside of a raid demonstrate that this type of engagement is an effective mode of contact, and that raids can be used as a measure of last resort. In fact, raids should be supplanted with in-depth investigations in which the cooperation of trafficked persons is voluntary and their rights are fully protected. Law enforcement agencies could increase accountability by ensuring that people with knowledge of trafficking situations are able to come

forward without fear of arrest or removal from the country. Once people who may have been trafficked are identified, accountability to victims of crime could easily be increased by following through on working with attorneys, advocates, and service providers to ensure the best outcome for trafficked persons.

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