



Global Alliance Against Traffic in Women

'DO YOU HAVE A BOYFRIEND HERE?'

Exploring decision-makers' treatment of migrant women



“Do you have a boyfriend here?”

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The **Global Alliance Against Traffic in Women (GAATW)** is an international network of 100 NGOs from all regions of the world that advocates for the rights of migrants and trafficked persons. GAATW members provide direct assistance to migrants and trafficked persons, run information campaigns, and engage in policy advocacy at the national and regional levels. The International Secretariat of the Alliance is based in Bangkok, Thailand and supports its members with research, knowledge building, and international advocacy. We focus on women’s rights to mobility and decent work.

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1. Introduction



Over the last twenty years, GAATW has examined the question of access to justice for trafficked and/or migrant women from various angles. In the early 2000s, GAATW explored the heavy crime-control approach to trafficking being favoured by national authorities at that time, and how this impeded access to justice for victims.¹ Then in 2006, the GAATW-IS carried out a global consultation with members to examine the experiences of trafficked persons in judicial proceedings. This research did not distinguish between nationals and migrants, but focused on procedural rights of all victims, both nationals and migrants.²

In 2017, GAATW turned to the question of justice for migrants, first examining the extent of access to justice for South Asian migrant women in the Middle East, then researching the

¹ GAATW, *Alliance News Thematic Issue on Legal Initiatives* (Bangkok: GAATW, 2002).

² GAATW, *Alliance News* (Bangkok: GAATW, 2006).

experiences of Cambodian migrants in Thailand.³ Both pieces of research focused on the attitudes of migrant women and the organisations that assist them, revealing that migrant women perceived that decision-makers held racist and discriminatory attitudes towards them, which in turn prevented them from making complaints to the authorities about mistreatment and exploitation. Then, in 2019, GAATW worked with partners in 22 countries in Asia, Africa and Latin America to document the nature of violence against women domestic workers and garment workers.⁴ This research, too, found that workers perceived that the judicial mechanisms in countries of destination would favour the employer over them. It also identified that women workers were afraid to complain about harassment for fear of being stigmatised by their fellow workers as ‘bad women’.

This past research raises the question of whether migrant women and the organisations that work to assist them are correct in their perception that they will receive less preferential treatment on the basis of their migrant identities, and if so, what are these stereotypes and prejudices that decision-makers hold about migrant women?

In order to answer these questions, we invited GAATW member organisations and their partners to participate in questionnaires and interviews aimed at exploring the ways in which migrant women are discriminated against by official decision-makers.

The responses revealed that the subjectivity of individual decision-makers plays a significant role in determining whether a migrant woman can access justice or not, and that this subjectivity is influenced by harmful stereotypes and prejudicial attitudes held towards migrant women. The research refers to both formal decision-makers and a range of administrative and ‘non-traditional’ decision-makers who have influence over migrant women’s day-to-day lives. We took this decision because in this globalised era, when it comes to decisions over migration, new actors have emerged: ‘the state is both present and absent, working with and through the private sector, NGOs, international agencies, other governments and, sometimes, different arms of itself’.⁵ Non-state actors, including ‘street-level bureaucrats’ are beginning to have more and more influence in important decisions over migrants’ lives.⁶

³ GAATW, *Enabling Access to Justice: A CSO Perspective on the Challenges of Realising the Rights of South Asian Migrants in the Middle East* (Bangkok: GAATW,2017); GAATW, *Access Unknown: Access to Justice from the Perspectives of Cambodian Migrant Workers in Thailand* (Bangkok: GAATW,2017).

⁴ GAATW, *Demanding Justice: Women Migrant Workers Fighting Gender-Based Violence* (Bangkok: GAATW,2019).

⁵ Mary Bosworth, “Border criminology and the changing nature of penal power,” in *The Oxford Handbook of Criminology*, ed. Alison Leibling, Shadd Murana and Lesley McAra (Oxford: Oxford University Press, 2017), 377.

⁶ Monish Bhatia, “The permission to be cruel: street level bureaucrats and harms against people seeking asylum,” *Critical Criminology* 28 (2020) 277-292; Alethia Fernández de la Reguera, “Immigration Detention, the Patriarchal State and the Politics of Disgust in the Hands of Street-level Bureaucrats”. *Feminist Encounters* 6, 2 (2022) 30.

Across Southeast and East Asia, Europe, Latin America and North America, the participants in this research reported the ways in which paternalistic stereotypes about migrant women's 'vulnerability' are used to justify restrictions on their rights and freedoms. At the same time, this stereotype is weaponised against migrant women who fail to behave in a way that conforms to these notions of 'vulnerability'.

This research also identified other common stereotypes that are applied to migrant women. For example, whether they are more likely to have 'chosen' to be exploited, their sexual behaviour and preferences, their parenting abilities, their ability to endure worse working conditions, and their trustworthiness. This research also revealed harmful attitudes that are specific to women of certain ethnicities, races or who are from specific regions or countries or who are doing specific types of work.

This report first sets out common rights violations that migrant women are subjected to in the course of their migration, before examining how the attitudes of individual decision-makers may contribute to these rights violations. The report then sets out in detail the stereotypes and prejudicial attitudes found to be held by decision-makers.

2. Methodology

For this research, we engaged GAATW’s member organisations and adopted a two-step process. First, we invited member organisations to partake in a questionnaire. The questions were formulated based on the thematic findings of an initial literature review. The questions were multiple choice and open-ended (see Appendix 1). We sought to elicit responses from a wide geographical range, and with organisations that assist migrant women in different capacities, for example ranging from legal assistance for victims of human trafficking to offering psychological counselling for migrant women. We received 21 responses to the questionnaire. The second stage of the research involved a follow-up interview with the organisations who had filled out the questionnaire and agreed to an interview. It included open-ended questions based on the key themes identified from the questionnaire (including stereotypes based on country of origin, language barriers and child custody matters). Twelve organisations were interviewed. Each interview lasted around one hour and took place via Zoom. For some interviews, we required translation assistance. Once the interviews were transcribed, they were thematically coded. The results of which are described in the proceeding sections.

Geographical spread of organisations
Bulgaria
Canada
Colombia (x 2)
Germany (x 3)
Mexico
Mongolia
North Macedonia
Peru
Singapore
Spain (x2)
Serbia
Switzerland
United Kingdom
USA (x3)
Europe (regional)

3. Different decision-making and identification processes

This research took a broad approach to the term ‘decision-makers’ referring to various persons who have sway over aspects of migrant women’s lives. These included:

- Judges
- Magistrates
- Prosecutors
- Other justice officials
- Police officers
- Immigration officials
- Human trafficking officials
- Social workers
- Military officials
- Housing officials
- Healthcare providers
- Other government officials
- Labour authorities and trade inspectorates
- Education authorities
- Victims’ rights bodies

The decisions examined in this research took place through court or tribunal proceedings, as well as via paper processes. Some of these decisions were also made informally, such as through informal advocacy to law enforcement about whether or not they should pursue legal proceedings against a migrant woman.

This broad approach to decision-makers and decision-making processes was in part due to the fact that the participants in this research represent organisations who assist migrant women to access a wide range of rights and forms of assistance. These range from formal decisions about whether a woman is a victim of trafficking, to decisions about access to social welfare benefits or healthcare. As set out in the introduction, we also recognised the rising influence that administrative and ‘non-traditional’ decision-makers have over migrant women’s day-to-day lives.

4. The rights violations that migrant women are subjected to in the course of migration

- a. Denied access to due process and the ordinary justice mechanisms they should be entitled to

From the surveys and interviews we learnt that migrant women are denied access to due process and the ordinary justice mechanisms they should be entitled to. A clear example of this comes from ASTRA-Anti-Trafficking Action (ASTRA) in Serbia, who reported on a case they had been involved in supporting a Filipina who was working as a domestic worker and experienced abuse at the hands of her employers. She managed to escape and made contact with ASTRA who informed the Serbian Centre for Human Trafficking Victims' Protection. This Centre violated her



rights through inappropriate interviewing practices and failed to submit an application for her temporary residence permit, which was crucial to enabling her to remain in Serbia. Then, as ASTRA recounts *'a couple of days after the interview in the Centre, an anonymous male voice informed the victim over the phone that she had not been identified as a human trafficking victim. The finding and opinion, or justification for the decision were not delivered by the Centre to either the victim, or her proxy'*.

Migrant women may also be wrongly forced, without any due process, to agree to a victim status that they do not identify with or is not correct in law or fact. Brigada Callejera in Mexico has documented how *'identification as a victim of human trafficking is often the only way sex workers can stop the police [from] harassing them. In some operations where sex work is carried out, they make women*

pass off as victims of trafficking without being victims, but with the threats they give them, such as taking them to prison if they do not identify themselves as victims of human trafficking, thus victimising them’.

When it comes to other administrative decision-making processes, such as access to benefits for survivors of human trafficking, we learnt from Advocating Opportunity that in this context, there is a *‘failure’* on the part of official actors *‘to recognise that you do not have to have citizenship to be entitled to benefits.’*

Language barriers are another key issue that migrant women face when interacting with judicial and administrative decision-makers, which prevents them from accessing justice processes and mechanisms. Advocating Opportunity in the United States finds it difficult to say whether migrant women or citizens are more likely to be identified as victims of human trafficking in the US, because *‘to compare the treatment you would need comparable service provision, which is not currently the case’* due to these language barriers. For example, they discussed how migrant women who visit the Department of Motor Vehicles (DMV) to apply for identification had DMV officers refusing to hear from them: *‘I can’t serve you because you don’t speak English’* (even though there are federal regulations on translation). Advocating Opportunity believes that migrant women are more likely to experience such treatment than migrant men, because of a perception by authorities that migrant women are less likely to assert their rights: *‘migrant women are not seen, not supported or unsure their rights exist’*. One of the organisations we interviewed described the language barrier as *‘a form of violence’*, because it prevents migrant women from participating in these important decision-making processes and is an obvious form of discrimination and disadvantage.

We see the impact of this in gendered situations. For example, a migrant rights organisation in Germany explained how the lack of translation assistance impacts Thai mothers’ child custody proceedings, particularly in cases where the father is German-speaking: *‘[at] the Child Welfare Office, and most of the time, when the German fathers are talking or giving an opinion, [they are] always more recognised than the Thai or migrant women who are not able to articulate or say what they want...’* In addition, they have found that *‘they are more likely to make a decision in favour of those who speak better German.’*

Even where translators are provided, they are not always beneficial. Supporting Women’s Alternatives Network (SWAN) in Canada described the case of a woman they were supporting through her Immigration, Refugees and Citizenship Canada (IRCC) process as a victim of human trafficking, and they attended a hearing at which the translator was doing *‘weird translations’* and mixing up key details, such as assuming the perpetrator was male when she was, in fact, female, and giving erroneous descriptions of where the incidents took place. Without the intervention of a SWAN employee, this woman would likely have received a negative decision in her case through no fault of her own: *‘I had to correct a lot of those mistakes, and at one point we asked to just talk privately with the officer because we were quite concerned that what was recorded there at that meeting for her visa was different from what the police report was, and so*

that could have a huge impact on the outcome.’ As SWAN further explained: ‘the police always assume that it has to be a man, but this time the perpetrator [of human trafficking] was also an East Asian woman, and what happened was that the police actually told us to just “figure it out” and they were telling us it was just a money dispute.’ This has led them to believe that ‘actors like even just the translator could play a big role in determining what support or even immigration visa someone could get coming out of a terrible situation.’

Migrant women may also be denied access to justice through the denial of legal financial aid. SWAN explained how Legal Aid would refuse to take on cases involving migrant sex workers: *‘the response really was about their belief that the likelihood of [migrant sex workers] succeeding is very low and so therefore they are not going to put resources into that case. I have also encountered situations where they were saying that the money in [the migrant woman’s] bank account fluctuates a lot so they cannot accept this person’* – this is an indictment of the precarious nature of the women’s work which is not accounted for in the qualification for legal aid.

b. Subjected to sexual and reproductive violence

We heard reports from participants that authorities who may be involved in immigration processes, such as police and the military, are perpetrating sexual violence against migrant women. Brigada Callejera in Mexico stated that they receive many cases of migrant women from Colombia, Venezuela, and Honduras who have been sexually assaulted, kidnapped, robbed, and raped by police officers, the Mexican military, and Immigration officials. At a structural level, Brigada Callejera described how in Mexico *‘in matters of gender violence, the state is the most violent, leaving its cases unpunished. In the femicides of migrant women, we live in a country where, without any war, there are more than 120,000 people who have disappeared, where we find graves with dismembered bodies, without being able to recognise the bodies and where women are killed with more and more violence, there is no follow-up, there is no one who recognises them, and their families are exposed to organised crime’*. This occurs in Peru, too, where CHS Alternativo stated that migrant women who are victims of human trafficking are more likely to face violence and harassment, including from law enforcement, during police operations.

The conditions that migrant women may be held in at the borders, pending the outcome of an immigration decision, can also be tantamount to gender-based violence. Brigada Callejera shared that in Mexico, migrant women are held at the border without access to bathrooms, forcing them to be reliant on criminal gangs (and thus be at risk of violence) in order to fulfil these basic needs. In North Macedonia, Open Gate told us that migrants, including women, are sometimes held in locked containers at border transit centres. This occurs mainly due to the procedures requiring them to be detained until they provide statements to the prosecutor related to smuggling activities.

Migrant women who are mothers, or who need access to reproductive healthcare, may face an additional level of violence, which could be broadly categorised as a form of ‘reproductive

violence'. When it comes to access to healthcare for pregnant migrant women, Brigada Callejera described how *'at the hospitals on the border they only accept five migrants, and so if there is a sixth woman whose life is at risk, they will not assist this woman, as they have a set number of migrants they will assist.'* Likewise, Freedom Network in the US reported that *'access for migrant women to reproductive and regular healthcare is low and there are restrictions on access. There have been lawsuits filed against the federal government because young women who are technically under the care of government agencies are restricted in their access to certain reproductive healthcare. Because visa adjudication (T-Visas can take up to 2 years) and other immigration relief takes so long, many don't have access to government-funded healthcare coverage for long periods of time'*. Access to reproductive healthcare can be especially difficult for sex workers, as explained by SWAN:

'Especially for migrant sex workers because, for one, there are so many services that if you don't have health insurance, if you don't have a PHN (personal health number) you cannot access...In British Columbia we have province-wide free contraception and migrant sex workers cannot access that because they need to provide their personal ID and many don't want to offer any of their personal information at all to any of these services... Even accessing the pharmacy is very difficult because we go to a low barrier clinic with a fake name but when we access the pharmacy they will have to check your ID to make sure that it matches what is on your prescription paper and there are situations where none of this information matches... Because we have to provide accompaniment for people to go to health appointments for translation and also for emotional support, we don't want SWAN's organisation name to be on that person's chart because it inadvertently would out that person's sex working status. But at the same time they are telling us we will have to put your organisation name on it. So we are trying to advocate for the people we work for to make sure they are not doing that.'

Likewise, a migrants rights organisation in Spain reported that: *'healthcare workers put little effort into the health problems of [migrant] sex workers, or act unsurprised that they are experiencing health problems – as though it is to be expected for them'*.

c. Denied reasonable adjustments and accommodations to account for cultural differences

Judicial and administrative decision-makers reportedly lack understanding of, and display indifference towards, the cultural and social specificities of migrant women. For example, Advocating Opportunity explained how administrative decision-makers may *'refuse to acknowledge'* that a migrant woman might have two last names (particularly those from Latin America) and this can create issues for them when they apply for social security, or when trying to look up their case, as it has been filed under an incorrect name. Court officials may also *'lack an understanding of global geography, and assume that everyone who speaks Spanish is Mexican.'* In the case of a female indigenous youth from Latin America, it was assumed that because they are from a Spanish-speaking country they could speak Spanish and understand the proceedings, when in fact their first language was an indigenous language.

Another example of a lack of cultural awareness comes from the organisation Dortmund Mitternachtsmission in Germany, who recounted how decision-makers wrongly interpret the behaviour of Nigerian women victims of trafficking:

'[Nigerian women] don't talk straight to people that they talk to if they have a lot of respect, they just look somewhere else, somewhere down. And some of the police people – and those in the Federal Office for Migration and Refugees – thought this was because they were lying because they were not looking in the eye of the interviewers, but this is just about not knowing about the behaviour of people in other countries and about their culture and so on... I think a problem is that the people from authorities who do not know other cultures and other countries and how people behave just think that everybody has to be like we are.'

Moreover, decision-makers exhibit a lack of understanding of, and do not make reasonable adjustments for, how social inequalities can affect migrant women's behaviour. Transient Workers Count Too (TWC2) in Singapore described how this affects government officials' dealings with migrant workers: *'there is a failure to understand the effects of power dynamics on workers' willingness to speak up, and thus officials may be too ready to take workers' toned-down answers (often given in an environment of fear) as the final word'*.

d. Extorted and subjected to corruption

Previous research by GAATW on the experiences of South Asian migrants in the Middle East found that a barrier to justice for migrants was corruption or perceived corruption with police officers colluding with recruitment agencies.⁷ In the present research, a similar finding has been made in relation to the barriers to justice that migrant women may face as a result of corrupt decision-makers. A notable example of this comes from North Macedonia, where in 2024, 99 migrant women were found in three nightclubs working as waitresses and dancers in violation of their visas.⁸ Open Gate was denied access to the women who were processed by the police and most of whom were sent out of the country within 24 hours as there were no indicators of trafficking. Some of the women were sheltered in a reception centre for foreigners (a kind of detention centre). When Open Gate asked for access to the women to provide support because they are one of the main service providers for victims of trafficking in the country, the permit to enter the centre was delayed until the women had already been repatriated. Open Gate was concerned that the police did not go through the proper processes for identification of victims of human trafficking:

⁷GAATW, *Enabling Access to Justice: A CSO Perspective on the Challenges of Realising the Rights of South Asian Migrants in the Middle East* (Bangkok: GAATW, 2017).

⁸ 4News, "Во угостителски објекти во тетовско и охридско, пронајдени 99 женски лица кои престојувале спротивно на целта, дрога и пиштол," 2024. Accessed: 11 June 2024. <https://4news.mk/pri-kontroli-vo-ugostitelski-objekti-na-podrachjeto-na-svr-tetovo-i-ohrid-pronajdeni-99-zhenski-litsa-koi-prestojuvale-sprotivno-na-tselta-droga-i-pishtol/>.

'To find out what they were doing and if they were exploited, you need to spend time with them to discuss it, give them time to rest, but when you have a case of 99 women who were interviewed within 12 hours... how can you expect that someone will openly tell you everything in those 5 minutes... so we think there were cases of trafficking and exploitation, but they were not properly processed, they were not given the time to think (reflection period) and speak with government officials, and NGOs were not invited to talk with them. I am not sure they were given the information about their rights, especially the right to a reflection period because there is no shelter in the country that has the capacity to accommodate 99 women, so [the government officials] were just very pro forma.'

Open Gate suspects that there was mutual collusion between all nightclub owners in that region as it was the end of the 'season' and so the owners of the nightclubs probably did not need the women anymore, 'so they simply reported them, and based on the report of the "concerned citizens" the police organised the raid in 3 clubs and collected [the women] and sent them back home'. We learnt of other examples of corruption when it comes to identifying migrant women as victims of human trafficking. In Mexico, Brigada Callejera explained that the Human Trafficking Prosecutor's Office is in charge of identification of victims, and they open an investigation file which is followed up until prosecution, however:

'Not even 10% of the cases are recorded, trying them as different offences/using different penal processes. Even when prosecutions proceed, this process often does not stop the traffickers and revictimises the women without giving them access to justice. There are corrupt officials who extort the traffickers in order to release them when they should be holding them for investigation, affecting the victim's trust of the authorities and putting her at risk with the trafficker.'

In Serbia, we learnt of the case of a domestic worker from the Philippines who was exploited and a victim of human trafficking at the hands of 'a political family' and so ASTRA assumes that 'because of the high level of corruption, ignorance and reactive investigation, the authorities did not do anything'. Moreover, they reported that a lawyer in Serbia has been acting as an employment broker and securing employment for hundreds of women from the Philippines, but in so doing, extorts 50 Euros from each of these women per month – an illegal practice.⁹ ASTRA believes that there must be collusion with the authorities: 'this lawyer is not working alone because all of these women are coming from the Philippines through Jakarta where the Serbian ambassador is giving dozens of D-visas per day, without checking any contracts, without doing anything, so definitely it is corruption with the Ministry of Foreign Affairs, police and this lawyer'.

⁹ Tanjug TV, "Slučaj Filipinke Samante, žrtve trgovine ljudima - Hristina Piskulidis - Manuela Armić," February 7, 2023, video, <https://www.youtube.com/watch?v=zNXXVNAWxK4>.

e. Subjected to unequal labour rights standards

Migrant women may be subjected to unfair and unequal labour rights standards and are not protected from this by decision-makers. There is a global trend of migrant women being restricted to low-wage jobs which typically come with lower labour standards. For instance, Katja Franko Aas writes about the 'increasing employment of Third World women as maids, nannies, sweatshop workers and sex workers in prosperous countries'.¹⁰

An organisation in Germany that supports domestic workers of diplomats recounted the difficulty of this for the domestic workers, as their visas are tied to that particular employer: *'if they come to us mostly we can argue or make negotiations and inform the Foreign Office. It does not bring much, it does not help them if you let them go to the police and file the complaint because of diplomatic immunity'*. Similar instances have occurred in the United States too, most famously with the 2013 case of Devyani Khobragade, who at the time was the Deputy Consul General of the Consulate General of India in New York City, and was charged with lying on the visa application for her domestic worker, Sangeeta Richard, and for paying her less than minimum wage, yet she left the country before facing court, as explained by a US immigration lawyer we interviewed:

'I think that the US law enforcement did the right thing in that case. They took the crime that was reported very seriously and took swift action. And they helped the worker who was being exploited to the point of tipping over to human trafficking and even when Khobragade said "in India this is normal and the way that domestic workers are treated", they said "well we are not in India, we are in the US". But there were broad sweeping ramifications of that case, to the point that India took diplomatic steps and made it harder for victims of human trafficking to get T-visas to join their family members in the US. There was a whole bunch of political jockeying that happened between the two countries and I think that influences a bit how the US proceeds now vis-à-vis India. This is just one stark example, but I think that sometimes how much the US is willing to go to bat and press the country, particularly if the trafficker is a diplomat, will have a lot to do with the diplomatic relations between the US and that country.'

f. Criminalisation

Migrants of all genders also face rights violations through the criminalisation of irregular migration. Migrant women come into contact with judicial and administrative decision-makers against a backdrop of an increasingly securitised and criminalised global immigration system.¹¹

¹⁰ Katja Franko Aas, *Globalization and Crime* (Los Angeles; London: SAGE Pub., 2007) 48.

¹¹ Katja Franko Aas and Mary Bosworth, *The Borders of Punishment: Migration, Citizenship, and Social Exclusion* (Oxford: Oxford University Press, 2013).

Scholars have highlighted the increased convergence of immigration and criminal justice in the new 'cimmigration' system.¹²

Migrant sex workers in particular become caught up between the immigration system and criminal justice apparatus. We surveyed and interviewed organisations from a number of different jurisdictions where the legal status of sex work varies, yet in all, sex workers occupy a precarious legal position. As is highlighted by FIZ, in Switzerland where sex work is legally permitted:

'It is estimated that up to 90% of sex workers have a migrant background. Authorities often utilise the linking of migration and prostitution laws to criminalise sex workers. To give an example, street sex workers face systematic checks and fines if they work outside of the designated zones. Repeated offenses result in withdrawal of their right to stay and work in Switzerland including a multi-year entry ban. This method is practised even though it is unlawful.'

Another issue that migrant sex workers face, as we learnt from a migrant rights organisation in the US, is that when they are applying to regularise their immigration status – for example, for permanent residency, a green card or citizenship – criminal records related to their sex work that might have been expunged or vacated previously, must be declared. And therefore, *'all the way through the citizenship stage you are going to have to explain and show that "yes, there was a charge, and yes there was a conviction, but it was later vacated", and unfortunately you still have to revisit that, but that is not to say that it is insurmountable'*.

In other instances, we see all migrants – not just migrant sex workers – being treated like 'illegal immigrants'. For example, one organisation in the US stated: *'migrants who have yet to secure immigration relief are called "illegal aliens" or simply "aliens" or "undocumented aliens".'* This is similar to the situation in many other countries where our participants work. Mongolian Gender Equality Center (MGEC) in Mongolia explained how when an individual's application to be recognised as a victim of human trafficking fails, it results in them instead being identified as *'an illegal immigrant and being deported'*.

Deportation is a common outcome of criminalisation. Dortmunder Mitternachtsmission in Germany described the rights violations that occur due to the manner in which women are often deported, with the authorities treating the migrant women like criminals and handcuffing them.

¹² Juliet Stumpf, "The Cimmigration Crisis: Immigrants, Crime, and Sovereign Power". *American University Law Review* 56, 2 (2006) 367-419.

5. The attitudes of individual decision-makers may contribute to these rights violations

One of the key issues highlighted in the questionnaire and interviews was the subjectivity of decision-makers. If subjectivity plays a large role in official decision-making, then understanding the stereotypes and prejudices held by individual decision-makers better may help us to challenge the rights violations described above.

The majority of participants reported that a migrant woman's treatment *'depends on the individual'*. As articulated by SWAN: *'it depends on whether the police officer is having a good day, and it also depends on whether the translator is having a good day or not, and based on that, it decides your life'*. This was the case in Spain too, where an organisation we interviewed reported that *'I think the treatment they receive depends on the official that you run into on that moment on that day'*. In Germany, Dortmund Mitternachtsmission explained how *'[the attitude towards migrant women] differs from person to person. Some decision-makers have very skeptical positions toward migrant women. Others are very open, understanding, and empathetic'*. By way of example, a lawyer at the organisation illustrated the variability of decisions made regarding a victim of human trafficking's right to stay in Germany: in one case, they had a woman from Cameroon who was in danger of returning as her family member had been killed by the military and she feared for her life, but the decision-maker said *'OK, well Cameroon is a big country, you can go to the other end of the country where nobody knows you'*. Conversely, in another case involving a migrant woman, the decision-maker acknowledged that the possibility of her getting a job in her country of origin was low, and so she was granted permission to stay in Germany on that basis.

Compounding this, often the decision-making process and reasoning behind a decision is opaque, and therefore, as FIZ stated, *'it can feel like a gamble, given the uncertainty and unpredictability associated with the outcome'*. This has been reported in other research by GAATW where NGO colleagues in Thailand explained that *'the official identification of victims of trafficking is cumbersome and opaque process performed only by the government'*.¹³

¹³ GAATW, *Heroes, Victims, or Slaves? Workers! Strengthening migrant and trafficked women's rights to inclusive re/integration in Southeast Asia and Europe* (Bangkok: GAATW, 2023) 36.

It can be challenging to address this discrimination because it is often hidden from official judgments or other documents. One organisation we interviewed in Germany reported that when the police are dealing with migrant women, *'the officers have to be careful with their language and attitude... if they show any negative treatment officially then they will be punished or disciplined. But in practice, they make some side comments and decisions [the outcomes of which] show discrimination'*. Yet, as we heard from organisations who work closely with migrant women on their applications for a variety of judicial and administrative decisions, these discriminatory attitudes do exist.

6. Paternalism and weaponised vulnerability

Much research has shown the paternalistic attitudes of authorities towards women migrants and victims of human trafficking.¹⁴ Several organisations reported that decision-makers are more likely to identify victims of human trafficking who have been subjected to sexual exploitation as compared to labour exploitation, as we see throughout the literature too, likely due to paternalistic notions of ‘saving fallen women’ which may take precedent over investigating claims of workplace abuse.¹⁵

Migrant women are at times viewed negatively because of this perceived vulnerability by judicial and administrative decision-makers. As Animus in Bulgaria explained: *‘I am sure that our government is not hospitable to illiterate women, women with a lot of children, pregnant women, women in different vulnerable situations.’* When asked what they meant by ‘vulnerability’, they explained: *‘for us vulnerabilities are not intrinsic human characteristics, but rather result from society’s inability to address them. In this regard, age could be a vulnerability, gender could be a vulnerability, care for children, elderly people or ill people in the family could also make someone vulnerable. Lack of education... the language barrier... prejudice and stereotypes in the receiving society make people very vulnerable as well. Procedures can make migrants vulnerable as well.’*

This vulnerability might invite paternalistic treatment. However, this paternalism is conditional, as explained by Fundación Renacer in Colombia: *‘whether a victim is identified depends on [whether] the official finds the victim’s story credible, if her story conforms to the strict legal requirements, if the victim acts like a “perfect victim” (she suffers, she accepts everything that is proposed [to her] and demanded [of her], is submissive and grateful) and her personal conduct in general conforms to the criteria of “good conduct”’.*

And, as we see in the existing literature, this protectionist attitude leads to the denial of the agency of victims of human trafficking.¹⁶ As explained by Advocating Opportunity, while female migrants may ‘benefit’ from the ‘saviour mentality’ of decision-makers and authorities who are *‘more willing to see migrant women as victims’* this can result in them taking away their

¹⁴ Kamala Kempadoo and Jo Doezema, *Global sex workers: rights, resistance, and redefinition* (New York: Routledge, 1998).

¹⁵ Global Network of Sex Work Projects, *Sex work is not trafficking* (NSWP, 2011); Laura Agustin, “Forget Victimization: Granting Agency to Migrants”, *Development* 46, 3 (2003) 30-36.

¹⁶ Leslie Ann Jeffrey, “Canada and migrant sex-work: Challenging the ‘foreign’ in foreign policy”, *Canadian Foreign Policy Journal* 1, 12 (2005) 33-48.

autonomy and instructing them on *'what is best for them'*. This is especially apparent when it comes to cases of unaccompanied female minors who the authorities try to *'wrap up and keep away from bad people'* which translates as *'keeping them away from their culture'*. While unaccompanied male minors are often released to family members without any rules or check-ins, female unaccompanied minors are instead sent to foster homes where there are rules and check-ins that are disguised in the language of *'safety'*. Some female unaccompanied minors are kept in school and foster homes past the age of 18, and if they leave they are classed as *'runaways'*. There is a perception that they lack *'capability'*.



We see this paternalism in other situations. SWAN recounted the story of a migrant sex worker in Vancouver who rang the police after being robbed at work. When the police arrived, they did not investigate the robbery but instead *'the police officer pulled her aside and kept asking her if she was OK and if she choose to do this work'*, and so *'the robbery was not investigated at all but it was about whether or not someone was forced to [do sex work]'*. Concerningly, they have experienced situations where migrant sex workers have called the police to report a crime, and once the police have checked their ID and realised that they are on a visitor or a student visa and they have violated the immigration prohibition on sex work, this led to their eventual deportation.

Advocating Opportunity explained that migrant women are deemed by decision-makers to have 'less power or less willingness to speak up for themselves' and this is related to decision-makers' perceptions of their 'culture and patriarchy in their country of origin'. Indeed, this accords with postcolonial feminists' critiques of the vulnerable and oppressed 'third world woman monolith'.¹⁷

This infantilising stereotype is reflected in a recent blog from the Government of Singapore, entitled 'I want to give my migrant domestic workers (MDW) access to her phone. But what should I do to ensure that she is still able to focus on her job?' and the advice includes reminding her that it is dangerous to use her mobile phone while crossing the road.¹⁸

The stereotype of the 'vulnerable victim' is weaponised against migrant women by decision-makers, meaning that migrant women who do not appear 'vulnerable enough' are subjected to discrimination. We spoke with an organisation in the US that represents foreign nurses who are trying to get out of exploitative work contracts, and here, a woman's ability to speak English and knowledge of her rights could work against her:

'You might have a nurse, someone who is pretty well educated and articulate in English and able to assert her rights, but still feels like she got defrauded and tricked and coerced into a very exploitative contract and now she is trying to assert her rights to get out of it. But an adjudicator might look at that and say, "oh well you're not that vulnerable, you should have known better, why didn't you read this contract more carefully before you signed it?" versus someone who is a domestic worker who is maybe illiterate and comes from a very rural village somewhere and this is their first time ever outside of that village, let alone in the US, and she is just seen as inherently much more vulnerable and a sympathetic victim.'

In Canada, SWAN described a case where a woman was able to speak English and could speak for herself and therefore appeared to be 'less vulnerable.' This intersected with racist stereotypes held by the decision-maker about 'aggressive' Black women and was used against her: '*[she] was from the UK, so there was no language barrier and I think that played a big role in how the judge was making a decision, as she was actually able to advocate for herself, but whenever she tried to explain something, immediately I remember the judge was like "you have to keep your voice down, you cannot be yelling!"*'

Research of over 750 cases at the Immigration and Refugee Board and the Federal Court of Canada found that in 47 cases involving Haitian women who were claiming protection, 'the IRB

¹⁷ Chandra Mohanty, "Under Western Eyes: Feminist Scholarship and Colonial Discourses", *Boundary 12/13*, 3 (1984) 333-358.

¹⁸ Ministry of Manpower, "I want to give my migrant domestic worker (MDW) access to her phone. But what should I do to ensure that she is still able to focus on her job?" 3 June 2024. Accessed 11 June 2024, <https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/publications-and-resources/ask-jaya/q5-i-want-to-give-my-mdw-access-to-her-phone>.

adopted a particular conception of who a “vulnerable Haitian woman at risk of persecution by reason of her gender” is (linked to factors such as residing in a camp or shantytown, being displaced, living alone, etc.) and used those criteria to deny the vast majority of claims because the claimants failed to fit this profile (they were married, educated, etc.). This is an example of the way in which vulnerability can be used as a tool of categorization not just to offer protection but also to exclude people from it.¹⁹

Another example of this from our research comes from Brigada Callejera in Mexico, who report that decision-makers at the prosecutor’s office ask victims of human trafficking: ‘*why didn’t you escape if you weren’t chained up?*’. Similarly, FIZ shared with us a news article reporting on a case involving a married couple whose conviction for trafficking their domestic worker from Southeastern Europe was overturned by the Zurich High Court, when the judge found that the victim ‘did not come from poor or very poor circumstances’, she had a ‘good upbringing’, language skills and training, and she had access to her passport, keys to the apartment, the ability to go out alone, and access to a cell phone and internet, and so ‘she could have left’.²⁰ We see this in other fields of study too. Work by Nayeli Urquiza-Haas on female drug couriers in England and Wales found that ‘[i]f these women did not conform to the ideal form of the victim, whether an extremely poor mother or a depressed repentant mother from the “third world”, they are judged as selfish and financially motivated offenders who are careless about spreading the “evil” of drug addiction’.²¹ Likewise, foreign women who are sentenced for drug couriering in Malaysia find that their ability to speak English and ‘worldliness’ is held against them by judges.²²

¹⁹ Anna Purkey, “Vulnerability and the Quest for Protection: A Review of Canadian Migration Case Law”. *Laws*, 11 (2002) 15.

²⁰ Der Landbote, “Zürcher Obergericht spricht Ehepaar weitgehend frei” 14 July 2023. Accessed 11 June 2024, <https://www.landbote.ch/zuercher-obergericht-spricht-ehepaar-weitgehend-frei-437554966433>.

²¹ Nayeli Urquiza-Haas, “Vulnerability Discourses and Drug Mule Work: Legal Approaches in Sentencing and Non-Prosecutions/Non-Punishment Norms”. *Howard Journal of Crime and Justice*, 56, 3 (2017) 548.

²² Lucy Harry, “Rethinking the Relationship between Women, Crime and Economic Factors: The Case-Study of Women Sentenced to Death for Drug Trafficking in Malaysia”. *Laws*, 10, 1. 2021.

7. Other common stereotypes and prejudicial attitudes

a. 'Exploitation was a choice'

Our research found that decision-makers routinely assume that migrant women 'chose' to be exploited. In some cases, they make uninformed assumptions about the women's 'culture' which present women's exploitation as a 'choice'. By way of example, FIZ in Switzerland reported the following:

'We have observed cases of human trafficking within the Roma community, which can involve forced begging. As begging is prohibited in many parts of Switzerland, victims often face criminalisation by authorities. This issue is particularly pertinent for the Roma community due to cultural stereotypes; begging is sometimes perceived as an inherent part of Roma culture, which can lead to crucial signs of human trafficking being overlooked.'

In other cases, cultural stereotypes about women from other countries lead decision-makers to conclude that the women 'chose' to be sexually exploited. CHS Alternativo in Peru referred to the well-documented stereotypes linked to the hyper-sexualisation of Venezuelan women, which has generated stigma towards them.²³ This stigmatisation ultimately has an impact on the treatment of potential victims of trafficking from Venezuela; it exists alongside a perception among authorities of what an 'ideal victim'²⁴ is, which influences them to believe that the victim consented to the sexual exploitation. As Andrea Querol points out, despite what is indicated in the laws and protocols of the Peruvian state, 'there is a gap between what the norm mandates and the conduct assumed by some actors. The underlying reasons are as varied as the life experiences that the actors bring to their interaction with the victims. But one stands out: stigmatisation. Relatively often, the actor approaches the victim from a position of power and gender bias. This reaction is not necessarily conscious, nor is it the exclusive power of some actors'.²⁵

²³ Laura Amaya and Saul Elguera, *Determinantes de la opinión pública xenófoba en el Perú* (Lima, Peru: Instituto de Estudios Peruanos, 2023).

²⁴ Joel Jabiles Eskenazi, *'Víctimas ideales' y discursos victimológicos en la persecución de delito de trata de personas en la ciudad de Lima* (Lima, Peru: Pontificia Universidad Católica Del Perú).

²⁵ Andrea Querol, *Buscando Justicia: Trata de personas, violencia y explotación: 40 testimonios* (Lima, Peru: CHS Alternativo, 2022).

Moreover, Espacios de Mujeres in Colombia described how: *'migrant women are frequently seen by authorities as women who go out on adventures and are willing to take risks. That is, if something happens to them, they themselves have all the responsibility* . Likewise, Advocating Opportunity in the US said that *'when it comes to issues relating to domestic violence and asylum, for women from Latin America the courts assume that this is related to gang-related violence... there is an assumption they are involved with cartels through their male partners'*.

b. Sexual promiscuity and attitudes towards sex work

Our research found that migrant women are often viewed as hyper-sexual. Fundación Renacer reported that in Colombian society, *'Venezuelan women are considered a threat to Colombian women because they will "steal" their husbands. Many are considered "prostitutes" for the sole fact of being Venezuelan'*. There is evidence that the 'hyper-sexualized Venezuelan woman' is a stereotype amongst US border guards too.²⁶

Brigada Callejera cited that in Mexico, *'the consul of Honduras points out that the women of his country are prostitutes and that they are not good mothers, which is why they do not help them when they have a legal and/or immigration, health, or trafficking problem'*.

Moreover, ASTRA reported that during an identification process for a victim of human trafficking, she was asked by the authorities: *'do you have a boyfriend in Europe and is that why you want to stay in Serbia?'*

The attitudes of decision-makers towards sex work can also greatly influence the outcome of cases such as identification as victims of human trafficking, asylum processes, visa applications, as well as administrative processes regarding healthcare or housing. Respondents talked about how the decision-makers *'ideological position'* on immigration and sex work is likely to impact the outcome of women's cases, particularly those of sex workers. Brigada Callejera reported that when it comes to authorities deciding whether a migrant woman should be identified as a victim of human trafficking they state things like: *'they asked for it', 'who sent her here?', 'were you practising prostitution?'*

It is not just the attitudes of 'traditional' judicial actors towards sex work that might affect the life of a migrant woman who is engaged in sex work, but other actors are involved, too, including social workers. SWAN was supporting a woman to regularise her immigration status. The Ministry of Children and Family Development (MCFD) was involved with her and her family because of her experiences of domestic violence. The MCFD social worker would do house visits and ask *'very intrusive questions about her personal life'* including - when they noticed there were three or four toothbrushes in the house - asking *'whether she was seeing a boyfriend'*. The fear that being

²⁶ Ellie Schemenauer, "Victims and Vamps, Madonnas and Whores: The Construction of Female Drug Couriers and The Practices of the US Security State", *International Feminist Journal of Politics*, 14, 1 (2012).

identified as a sex worker would result in worse treatment by the authorities is so great that when during the Covid-19 pandemic, SWAN was offering a Covid-19 relief fund to compensate sex workers for lost income during the pandemic (as they were unable to apply for the government fund offered to other workers), this woman did not want to accept this money for fear that it would show up in her bank account that it came from SWAN and so she would be 'outed' as a sex worker to the MCFD.

c. Parenting ability

Migrant women are also subjected to harmful stereotypes around their parenting ability. Advocating Opportunity explained that *'from time to time we are involved with formal Child Protective Services, and there migrant women face institutional bias about "how can migrant women care for their children? Can they really care for their children as well as an American foster family?'"* Such negative views of migrant mothers were reported by Brigada Callejera too, who shared that when migrant women give birth at public hospitals in Mexico: *'sometimes [the authorities] take, or are willing to take, their children away if they know this woman is a sex worker, or if they are migrants who do not have resources to take care of these babies'*. These attitudes towards migrant women's parenting ability are so pervasive in Mexico that pimps can use the fear of child protection authorities to control and exploit women: *'these pimps who are trying to control the woman through their children, so if they have any claim or they don't want to work or want to make a claim, they will tell the police to withdraw the child custody of them... they denounce the woman to the judicial system because they want to keep their children as a means of control'*²⁷.



²⁷ Elvira Madrid Romero, Jaime Alberto Montejó Bohórquez y Rosa Icela Madrid Romero, *Indicadores de Violencia de Género en el Mundo Laboral de las Trabajadoras Sexuales en México* (Mexico: Brigada Callejera, 2019).

In Switzerland, FIZ reported that for pregnant mothers: *'child protection authorities are frequently being involved [in immigration proceedings], without transparent reasons, particularly for victims of human trafficking in the asylum context'*. In Germany, an organisation that supports migrant women with child custody matters found that often the Child Welfare Officers *'try to impose German values onto the family'*, for example, one Thai mother was asked: *'why does your family always eat rice?'*



Decision-makers treat migrant women, particularly from Africa and the Middle East, who are travelling without their husbands but with children, far less favourably and, as reported by Animus in Bulgaria, find them *'too unreliable and too vulnerable'* as they are *'considered to be less competent and able to cope, dependent, bearing too many children and unable to care for themselves and their children without education or the capacity for employment.'* Fundación Renacer in Colombia also reported that migrant women who are mothers are: *'viewed [by society and some institutional actors] as irresponsible for having children in their difficult economic circumstances'*.

When child protection processes are commenced, migrant women are often at a specific disadvantage. Animus explained that *'if you have a child and the child is at risk, then the child protection system enters... which is difficult because of social workers' lack of experience with third country nationals and because of the language barriers'*. Because translators are expensive, Animus' clients might resort to using Google translate.

Another stereotype held by decision-makers regarding pregnant migrants and migrant mothers is that they had children only in order to remain in the country of destination. By way of illustration, an organisation in the United States reported that *'sometimes decision-makers use the derogatory term "anchor baby" for children born in the US to recent arrival, undocumented women, referring to the fact that a child born in the US will automatically be granted US citizenship. For this reason, many decision-makers are hesitant to allow pregnant women into the US'*.

In Germany, we also learnt that Thai women who come in contact with social services who are deciding on matters of child custody following a divorce will view the women as 'marriage

migrants': *'as a Thai you married a certain guy and came to live here because you probably needed to secure a residence permit'*.

Moreover, as Animus explained, *'attitudes towards multiple mothers who are from minorities or are third country nationals are negative because they rely on welfare'*. This perception of migrant women as mothers of multiple children who 'drain' the welfare system was identified in other jurisdictions too. A publication that explored the experiences of Colombian migrants in Ecuador found that focus group participants reported discrimination by healthcare workers:

'In hospitals there is tremendous discrimination. When I gave birth to my child, the youngest one, one of those doctors who did the check-ups arrived. He was taking my data, he came to examine me and continued with the examination, anyway. When I spoke to him, he asked me for my name and then he said to me: "Where are you from?" So, I told him: "Colombia". And he told me: "Oh, yes. I figured it out" And I said to him: "What's wrong? Is that a problem?" And he told me: "No, it's just that you come to give birth here, have your children, free of charge, we do you that favour so consider yourself well-served'.²⁸

In the above instances, these negative attitudes towards migrant women influence decisions that are made over their reproductive healthcare. Indeed, Monish Bhatia argues that attempts to 'oppress, control and discipline poor and illegalised single mothers from Global South' through UK border control is a form of 'reproductive injustice'.²⁹ We find this in the US too, with debates over immigration being projected onto the bodies of migrant women with public concerns about their fertility.³⁰

d. The ability to endure worse working conditions

There is also a stereotype that migrant women can and should endure poorer working conditions than local workers. By way of illustration, an organisation in the US described their involvement in cases of labour exploitation involving domestic workers, and how there can be the attitude – even though it is not explicitly expressed – by judicial decision-makers of, *'well you are a nanny from a rural poor part of the world, you got to immigrate to the US and do this work, and sure it wasn't all the things you might have thought it would be, but was it so bad? Isn't it better than where you started?'*. This organisation believes that these attitudes are due to *'broad assumptions about work and who is doing it and how much value we attribute to that work.'* This is particularly the case in the neoliberal world where the labour of women from the global south

²⁸ Felipe Aliaga Sáez and Cristhian Uribe Mendoza, *Migración de retorno: Colombia y otros contextos internacionales* (Bogotá: Ediciones USTA, 2018) 32.

²⁹ Monish Bhatia, "Reproductive injustice in Britain: punishing illegalized migrant women from the Global South and separating families," *Identities* 30, 4 (2023).

³⁰ Allison S Hartry, "Birthright Justice: The Attack on Birthright Citizenship and Immigrant Women of Color", *N.Y.U Review of Law & Social Change*, 36 (2012) 57-101.

is systematically undervalued and host countries treat migrant workers with a 'use and discard' policy, turning them into a disposable labour force.³¹



As TWC2 in Singapore said: *'there is a pervasive view among Singaporeans that migrant workers should be grateful to be working in Singapore, and that what they are able to earn here would be more than they could earn at home. Being so pervasive, such a view would surely be found even among decision makers'*. Indeed, we see this in other research on domestic workers in employment disputes in Bahrain, who find that when reporting their cases to the police, there is a lack of sympathy, as one police woman interviewed described: *'it may seem like housemaids here are treated badly, but it's so much better than their lives at home. There, they have absolutely nothing. At least here we give them a job, food and a place to live'*.³² The same was found in other research by GAATW on the rights of South Asian migrants in the Middle East, where embassies were not supporting their nationals with claims of trafficking and 'underlying those theories

was a sense that poor migrants, especially women migrants, should feel grateful to have had any assistance at all and should not complain'.³³

e. Unreliability/untrustworthiness

Another theme that came up often during the interviews and in the questionnaire was decision-makers not believing migrant women; this was often tied to prejudices about the women's

³¹ Mary-Kay Bachour, "Disrupting the myth of maquila disposability: Sites of reproduction and resistance in Juárez", *Women's Studies International Forum*, 48 (2015) 174-184; Brenda Yeoh and Shirlena Huang, "Spaces at the Margins: Migrant Domestic Workers and the Development of Civil Society in Singapore", *Environment and Planning A*, 31, 7 (1999) 1149-1167.

³² Staci Strobl, "Policing Housemaids: The Criminalization of Domestic Workers in Bahrain", *British Journal of Criminology*, 49, 2 (2009) 177.

³³ GAATW, *Enabling Access to Justice: A CSO Perspective on the Challenges of Realising the Rights of South Asian Migrants in the Middle East* (Bangkok: GAATW, 2017) 35.

citizenship and race. For example, Dortmunder Mitternachtsmission reported the stereotype held by decision-makers in Germany that *'victims of trafficking from West African countries tell lies'*. The organisation explained that *'[the women] do not know what to expect from the police. The police are the first persons who get in contact with these women, and they initially tell stories that are not true, because the traffickers told them to tell these stories'*. This is widely recognised as a common behaviour of victims of trafficking around the world,³⁴ but the police fail to recognise it in respect of West African women, *'after a while when they feel safe [the women] normally tell the true story about what has happened, but some of the police think that the women always lie.'*

In Singapore, TWC2 has found that: *'in face-to-face dealings with migrant workers, government officials remain correct and civil most of the time. They generally do not use derogatory language. However, it is not difficult to see hints of prejudiced attitudes, e.g. that workers' claims of mistreatment are exaggerated or untrustworthy, or to give more weight to employers' and agents' protestations of innocence than to workers' willingness to speak up'*.

Migrant women's 'believability' is discussed in other criminal justice contexts, as illustrated by a report on women sentenced to death for drug trafficking worldwide: *'many decision-makers disbelieve women's plausible innocence claims or discount the effects of relationships and economic instability on women's decisions to traffic drugs'* and *'these challenges are heightened in the lives of women who are noncitizens.'*³⁵

f. Stereotypes specific to regions or ethnicities

Many organisations reported that decision-makers possess stereotypes or prejudicial attitudes towards migrant women based on their countries of origin; stereotypes that are gendered, racialised and sexualised.

Brigada Callejera in Mexico recounted the discrimination against indigenous women and migrant women of African descent: *'they are even more discriminated against because of the colour of their skin: the cases that we have had have many times been at immigration and even if they have documents, they detain them, they tear them up, they take them to immigration detention centres even though they have given them a permit'*.

In Vancouver, Canada, SWAN described a particular case they had been involved in and the discrimination they witnessed therein:

³⁴ United Nations Office on Drugs and Crime (UNODC), 'Evidential Issues in Trafficking in Persons Cases – Case Digest' (2017) 12-18

³⁵ Cornell Center on the Death Penalty Worldwide, *"No One Believed Me": A Global Overview of Women Facing the Death Penalty for Drug Offenses* (Ithaca, NY: Cornell Law School, 2021).

'I saw the differences between how Asian women or East Asian women are treated in a situation compared with a Black woman... we were there during her court procedure and at the hearing what was being brought up over and over again by the judge was about how he needed to find an organisation that could control her, so she is not out in the public earning money by doing sex work, because he said paying her bail is very easy for her, because she is a sex worker. The language that was being used to talk about a migrant Black sex worker I felt came from a deeply racist stereotype of Black women, so Black women don't get the grace that probably Asian women do because I think Asian women are the victim of a stereotype where they are docile and can't make decisions for themselves, versus this Black woman they thought was out here cheating the system... During that whole procedure the judge was holding onto a piece of evidence that she lied...'

Some organisations also reported that the attitudes and outcomes of migrant women's cases varied depending on their country of origin and the international relations between the host country and country of origin. So, for example, a migrants rights organisation in the US reported that:

'The country of origin of the migrant woman and how many other migrants from that country are seeking similar relief, as well as the current diplomatic relations between that country and the US both play a role in determining outcomes. This is reflected in the processing time (some countries take longer than others) and ultimate outcome of immigration petitions. You can look at the US State Department's visa bulletin to see the different wait times for family-sponsored immigration petitions based on country of origin: China, India, Mexico and the Philippines have the longest wait times.'

Similarly, one organisation interviewed in Spain stated that the authorities *'try to promote the regularisation of more people from Venezuela or Colombia because of their international relations, as compared to people from North Africa'*. We see potential nationality bias in other immigration outcomes: research on the UK's National Referral Mechanism for the identification of victims of human trafficking found that 45% of trafficking victims were EU nationals as compared to 17% of non-EU nationals, despite some of the top source countries for trafficking (e.g. China, Vietnam, Nigeria, and Albania) falling outside of the EU. In addition, the number of rejected claims were almost 5 times higher amongst non-EU claims than claims by UK nationals.³⁶

³⁶ Maya Esslemont, "How the UK Could Be Failing Migrant Modern Slavery Victims - And What We Can Do About It", 15 April 2020. Accessed 11 June 2024, <https://eachother.org.uk/slavery-victims-slipping-through-uk-safety-net/>.

Conclusion

Many of the findings contained within this report will not be surprising to GAATW's member organisations and allies who, for decades, have worked hard to promote the rights of migrant women at home, abroad and on the way.

This research confirms our observations that sexist, racist and classist attitudes towards migrant women play a role in official decision-making and act as a barrier to the realisation of migrant women's rights.

It also confirmed our observations as to the unequal treatment that migrant women are subjected to by decision-makers. Migrant women are often denied due process and access to the justice mechanisms that they should be entitled to. They are subjected to sexual and reproductive violence at the hands of state actors, and to unequal labour rights standards and criminalisation. Migrant women are also denied reasonable adjustments to account for their cultural differences, making it harder for them to give evidence and to be heard and believed by decision-makers.

The findings of this research also demonstrate how the subjectivity of individual decision-makers contributes to these rights violations, with the majority of participants reporting that a migrant woman's treatment very much 'depends on the individual.' Migrant women may come into contact with more decision makers due to their caring responsibilities (such as in child custody matters) and through their involvement in informal or even criminalised labour sectors, such as sex work and domestic work. Decision-makers' harmful stereotypical and prejudicial attitudes negatively affect the outcome of a woman's case or request for assistance.

One of the most significant such harmful assumption documented by this research was about migrant women's inherent vulnerability, which is either used paternalistically to control and suppress their migration, or weaponised to deny them rights and protections when they are perceived to not be 'vulnerable enough.' Other harmful stereotypes included assumptions that migrant women are more likely to 'choose' to be exploited, that they are sexually promiscuous, that they are unsuitable parents, that they are able to endure harsh working conditions or that they are unreliable or untrustworthy.

This research also revealed certain stereotypes that are specific to women of particular races, ethnicities and nationalities, revealing the intersectional nature of discrimination against migrant

women by official decision-makers. In particular, Black women and women of African descent experience especially acute discrimination in Europe, North America and Latin America.

Ultimately the findings of this research can be taken as a call to action. They confirm what many organisations working to promote the rights of migrant women have been observing for years, and can now lay the foundations for a campaign to challenge these harmful prejudices on both individual and structural levels.



Appendix 1: Copy of questionnaire

Exploring official decision makers' treatment of migrant women

1. What types of judicial and/or administrative decisions are the migrant women you support involved in? Please tick/describe where applicable. Determinations by a government body about whether or not a person is a victim of human trafficking

- Determinations by a government body about whether or not someone is a refugee
 - Criminal proceedings in court
 - Civil proceedings in court
- Decisions by the police/prosecutors about whether to investigate or pursue a case
 - Decisions by housing or healthcare authorities
- Decisions by immigration officials about whether to grant someone a visa or grant someone permission to stay in the country.
 - Other, please specify:

2. Can you briefly describe each of these processes that you work on, including the following:

Who are the key decision-makers? Please tick/describe where applicable.

- Judges
- Magistrates
- Government officials
- Police
- Social workers
- Military

- Housing authorities
- Healthcare providers
- Civil servants in Department for Immigration (or equivalent)
- Civil servants in Department for Justice (or equivalent)
- Dedicated governmental human trafficking body
- Other, please specify:

3. Are any other actors involved who are not the primary decision-maker but who have influence over the process?

- Police
- Embassies
- Other, please specify:

4. Is this a paper process, or does it involve a court hearing or tribunal?

- Paper process
- Court hearing
- Tribunal
- Other, please specify:

5. What involvement (if any) do the women themselves have in these processes? Please describe.

6. If you are able to, please describe below your general impression of what the most common outcomes of these cases are?

7. Do these decision-making processes involve the 'categorisation' or 'identification' of migrant women in any way? For example, a formal decision that a person is a "victim of human trafficking", or an "asylum seeker", or an "irregular migrant"?

Yes

No

If yes, on what basis are these categorisations made? Please describe below.

8. How does a woman's formal identification as a victim of trafficking, victim of other crime or as a refugee, affect her access to support, if at all? If applicable, please describe below.

9. What do you think are the attitudes of these judicial and/or administrative decision-makers towards migrant women?

10. How do decision-makers speak to or write about migrant women? If applicable, please describe below.

11. Do they use derogatory language? If so, please describe below.

12. Do you have specific examples of these attitudes, or want to provide further details? If so, please do so in the space below:

13. How does the treatment by decision-makers differ, if at all, for migrant women who are also: (please describe below where applicable)

- . Sex workers?
- a. Mothers and/or pregnant?
- b. LGBTIQ+?
- c. Members of racialised groups, ethnic minorities or indigenous women?

Other, please specify:

14. What, if any, stereotypes exist among these judicial and/or administrative decision-makers towards migrant women? For example, stereotypes might include whether certain women are less capable of looking after themselves, or are more likely to be dishonest, or are deserving of poorer living and working conditions. If applicable, please describe below.

15. Do judicial and/or administrative decision-makers acknowledge the 'vulnerability' of migrant women?

Legal system has a formal 'vulnerability' criteria

Decision-makers informally acknowledge the women's vulnerability in the reasoning of their decisions

Not sure/not applicable

Other, please describe:

16. What role, if any, do external socio-political factors (such as political context or media coverage) play on these processes and decisions? Please describe, where applicable.

17. What, if any, data do you have to support your answers?

Court judgments

Paperwork

Testimonies

Other, please specify:

18. Would you be willing to share this data with GAATW?

Yes

No

19. Would you be willing to take part in a follow-up interview?

Yes

No

20. Any other comments you wish to share:



Global Alliance Against Traffic in Women

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